Tennessee a deduction of fixed premium of $460 was made, and Bedford got only $4,140, though the notes covered the $4,600.

Record, pp. 28 (10), 84 (8), 47 (10).

H. L. Bedford was also required to execute the following withdrawal of his shares of stock, viz.:

"The within shares of stock in the Eastern Building and "Loan Association of Syracuse, N. Y., are hereby withdrawn, "and I have this day received the sum of forty-six hundred dol-"lars in full of the amount due me by reason of such with-drawal.

"Dated at Memphis, July 16, 1891.

"[Seal.] H. L. BEDFORD.

"Witness—J. H. T. Martin."

Record, p. 63.

The by-laws of the Eastern Building and Loan Association provide "that a payment of one hundred dollars per share "named in the certificate that has been in force till maturity "shall be accepted as full payment of all claims on their certifi-cate as against this association."

Record 62 (21).

The by-laws provide for withdrawal of shares before ma-turity.

Record, 61 (18-19).

The stock held by H. L. Bedford matured at the fixed date, August 1, 1897.

Record, p. 53.

The loan of $4,600 was the estimated "maturity value" of the stock.

Record, p. 78 (2).

Bedford never had any loan for six and a half years, and only got $4,140, and made no agreement until the papers were executed by him. The six and a half years can only be made out by going back to the date May 1, 1891, and the corpora-tion never even expressed a desire to make any loan until May 18, 1891. Bedford's application for loan fixes no dates. All terms were fixed by the Eastern Building and Loan Associa-tion, and fixed in such a way that Bedford never had any loan for six and a half years, and never any loan of $4,600, and the stock was withdrawn absolutely.

After the Eastern Building and Loan Association assented to making a loan on May 18, 1891, H. L. Bedford (Record, pp. 67-68) made what is called an "application for advance," ask-ing that the loan or advance be made. In this application for advance (Record, pp. 67-68) H. L. Bedford, for the first time in reference to the loan, referred to the charter and by-laws. Section 2 of artile 15 of the by-laws of the association (Rec-

ord, p. 62) authorized the loaning of funds to any one in greater sums than the amount of stock held by the borrower, and Bedford's application was to borrow $4,600, not $4,600 less $460. Attached to this "application for advance" is an affidavit of H. L. Bedford, dated June 20, 1891, as to title of the property mortgaged, etc. (Record, pp. 67-68.) The mortgage was acknowledged June 18, 1891, and registered June 20, 1891. The witness, Pierce, who was attorney for and a director in the Eastern Building and Loan Association (Record, 27-28) (9), says in his testimony this "application for an advance to which is attached the affidavit of one H. L. Bedford is the acceptance by the applicant of the action of the Board of Directors of May 18, 1891," and an "additional agreement by him to comply with the charter, by-laws," etc.

It is not contended by the association that the contract was closed or concluded in New York after Bedford executed the notes and mortgage by any acceptance of them in New York by such association. The witness Pierce, in his testimony (Record, p. 42) (18), claims "the contract for the loan to Bedford was concluded at the home office of the association at the meeting of its Board of Directors," May 18, 1891. It is apparent, however, that the contract was not concluded May 18, 1891, in New York, as Bedford did not then know the terms of the notes and mortgage afterward executed by him, and never in fact knew such terms until he signed such papers afterward in Tennessee.

The application for advance (Record, pp. 67-68), has attached to it an affidavit of date June 20, 1891. At that date the papers had all been executed and the mortgage recorded, and the notes were in the hands of the association or its agent, After this nothing whatever was done, and the contract was necessarily closed in Tennessee by the execution of the papers and the recordation of the mortgage. All this had been done at the dictation and direction of the association, and after June 20, 1891 no acceptance was required of the association in New York to complete the contract, which had been made as it directed. The contract was completed by Bedford having done in Tennessee all he was required to do by the association. After June 20, 1891, the association merely paid over the money to Bedford, but this payment was merely in consequence of the contract previously concluded.

The witness Pierce (Record, pp. 40-41) (15), shows the method by which Bedford and all borrowers obtain loans was to make out an application for loan "upon a printed form furnished" by the corporation through its Tennessee agent, bring it to the attention of the local board in Tennnessee and have the appraisers in Tennessee report thereon, "after which it

was transmitted to the association in New York, where it was passed upon." If granted by such association, as it did herein, on May 18, 1891, an abstract of title was required, which had to be approved, and, if approved, the papers were prepared in New York and sent on for the proposed borrower to execute, "with such instructions as the circumstances in each case might require." After the papers were executed and the mortgage recorded they were returned to the corporation in New York. The money was then "forwarded to the applicant through the local soliciting agent of the association or the local attorney by draft of the association." There was no direct communication whatever between H. L. Bedford and the New York corporation. Every paper he signed was on a printed form provided by the Eastern Building and Loan Association to its agents in Tennessee. (Record, 83 (3) 40-41 (15), and everything to or from him, including payments, passed through the hands of the agents of the Eastern Building and Loan Association in Shelby County, Tennessee. (Record, 35-36 (3) (4) (5) 37-38 (8) 39 (12) 40 (14) 40-41 (15) 42 (17) 83 (4) 86 (16) 63 (4). The witness Pierce (Record, pp. 42-43 (18) says: "It is a fact, however, I believe, that the payments were received through J. H. T. Martin and his successor as local treasurer, but as agent for Bedford."

An agreement of counsel (Record, 90-92) shows that all loans made by the Eastern Building and Loan Association in Tennnessee were made in the same way that the Bedford loan was made. The Bedford transaction was part of its general business in Tennessee conducted in the way all the business in Tennessee was conducted.

Article 3 (Record, p. 45) of the charter of the Eastern Building and Loan Association, and section 3 of article 1 of its by-laws, provide for transacting business outside of the State of New York. The said by-law (Record, p. 55) says: "Branches or agencies may be located and business done in any part of the State of New York or in any other State or Territory of the United States, where no legal prohibition exists." Article 18 of the charter (Record, p. 49) provides: "The directors of this association may enter into such contracts and appoint such agents for its business management as they may deem for the best interest of its affairs." Sections 1 to 6 of article 16 of said by-laws (Record, pp. 62-63) provide for the establishment of "local boards" in the different States. Section 2 of article 16 (Record, p. 63) provides, "traveling agents of the association" could appoint the first officers of the local boards. Section 3 of article 16 provides (Record, p. 63): "*It shall be the duty of the officers of the local board to pass on all applications for loans which are received by the association from mem-*

bers residing in the town where such local board is located and to protect the interests of the association in all practicable ways." Section 4 of article 16 (Record, p. 63) provides: "*Members may, if they so desire, make monthly payments on stock to the local treasurer.* But such local treasurer shall be deemed to be the agent of the members, and not of the association." Section 5 of article 16 (Record, p. 63) provides for the issuance by the Eastern Building and Loan Association of charters to the different local boards in the different States. The application for the local board charter in Shelby County, Tennessee (Record, p. 70), says: "It is the duty of local board to assist the association in every way possible in the transaction of its business. *No loans will be made to members unless they are connected with and under the jurisdiction of a local board. Applications for loans will not be entertained at the home office unless first approved by the local board.*" The record showed there was a local board at Memphis, Shelby County, Tennessee, and (Record, p. 69) that officers were elected August 13, 1890.

Mr. Pierce, in his evidence (Record, p. 40 (15), showed this local board at Memphis appointed the appraisers, who appraised Bedford's property May 5, 1891. The witness said: "The appraisers were appointed by the local board, whose duty it was to certify as to the value of the property offered as security on all applications for loans."

This witness Pierce (Record, p. 33 (20) spoke of the association as having "considereble business' at Memphis, Shelby County, Tennessee, and of its necessitating a local board, he saying the purpose of such local board "was to foster the business of the association in the particular locality, and to afford the members of the association connected therewith a means of communication with the association at the home office, and to facilitate the transaction of any business which they have with the association."

At the time of the transactions in question herein the Eastern Building and Loan Association had its agents, H. B. Martin, and J. H. T. Martin representing it in Shelby County, Tennessee, as well as its local board.

(Record, pp. 35-36 (3, 4, 5), 32-33 (20), 83-84 (4, 5, 6), 69-70.)

It appeared also that the Eastern Building and Loan Association carried on business at other points in Tennessee, as an agreement of counsel (Record, p. 92)) says: "During the period covered by the transactions with defendants the complainant made some loans in Tennessee outside of Shelby County." The bill of the Eastern Building and Loan Associa-

tion (Record, p. 1) alleged, generally, it was *"doing business in the State of Tennessee."*

The agreement of counsel before mentioned shows (Record, pp. 91-92) that after the passage of the prohibitory laws by the Legislature of the State of Tennessee, hereinafter mentioned, the said association, though it knew of such laws, claimed the right to continue this general loan business to all parties who held stock in said association, and that it did, in fact, continue such general loan business without complying with the terms of such laws. This agreement of counsel (Record, pp. 90-92) showed that the Eastern Building and Loan Association made nine loans in Shelby county, Tennessee, exclusive of the one in question herein, and that the association "made some loans in Tennessee outside of Shelby County."

The dates and amounts of the Shelby County loans were as follows:

June 1, 1891, William Short	$ 1,482 78
Sept. 1, 1890, J. H. T. Martin	6,795 36
Oct. 1, 1890, Thomas E. Edwards	2,718 30
Dec. 1, 1890, E. E. Rudisill, et al	4,201 08
Jan. 1, 1891, J. H. T. Martin	8,293 74
Jan. 1, 1891, H. L. Trezevant, et al	3,706 56
April 1, 1891, A. E. Jenkins, et al	1,235 52
July 1, 1891, R. B. Pegram, et al	2,639 06
July 1, 1891, G. and M. E. Sims	551 45
	$31,623 85
Add Bedford loan	$ 4,600 00

Of the above the following loans were made after the passage of the acts of the Legislature of Tennessee in 1891, defining the terms upon which foreign corporations could do business in Tennessee, viz.:

June 1, 1891, William Short	$ 1,482 78
April 1, 1891, A. E. Jenkins, et al	1,235 52
July 1, 1891, R. B. Pegram, et al	2,639 06
July 1, 1891, G. and M. E. Sims	551 45
H. L. Bedford	4,600 00
	$10,508 81

The said association claimed the right to make loans even when the applictaions for loans were dated after the passage of the Tennnessee acts, as William Short's application was dated May 11, 1891; Gilbert Sims' application dated May 23, 1891, and R. B. Pegram's application dated April 13, 1891. (Record, p. 91.)

H. L. Bedford, in his testimony shows the business with him was gotten up by the agents of the Eastern Building and Loan Association in Tennessee and in consequence of their efforts—that witness further showed that when he had the transactions in question he was ignorant of the passage of the prohibitory laws by the Legislature of the State of Tennessee as to foreign corporations, and of course was ignorant that the Eastern Building and Loan Association had not complied with the terms of such laws.

Record, pp. 84 (7, 10), 85 (12, 13), 93 (2).

Article 17 of the charter divides the funds of the association into "the loan fund and the expense fund," and provides the loan fund can be used for the making of loans on security, as provided by the by-laws and to pay amounts due withdrawing shareholders. The funds of the association not required for advances on shares may be invested" in securies or deposited. (Record, pp. 48-49.)

Section 3 of Article 19 of the by-laws of the association provides: "All loans made by this association shall be made upon satisfactory note and first mortgage secured on real estate," etc. (Record, p. 59.)

Section 1 of Article 15 of by-laws (Record, p. 62) provides: "Each shareholder for each share named in their certificate shall be entitled to a loan of $100 from the association, provided they shall first make application for such a loan upon a blank furnished by the association for that purpose, if the condition of the loan fund in the treasury shall warrant it. All applications for loans shall be filed and numbered consecutively as received and be examined and approved or rejected by the board in their regular order."

Section 2 of Article 15 of the by-laws provides: "Nothing herein contained shall prevent the board of directors from loaning funds of the association to any member in greater sums than the above provided upon approved securities."

Record, p. 62.

The Eastern Building and Loan Association filed its bill June 24, 1895 (Record, p. 1) to foreclose the mortgage executed to secure the notes falling due in June, 1893, and after such notes being unpaid.

Bedford and wife in their answer claimed that when the loan was made and the mortgage executed that the Eastern Building and Loan Association were carrying on business in Tennessee illegally—that various statutes had been passed by the Legislature of Tennessee fixing the terms upon which foreign corporations could carry on business in Tennessee, and that the Eastern Building and Loan Association had not complied with the terms of said statutes. (Record, pp. 12-19.) The

contracts in question were claimed to be void. The acts in question are as follows, viz.: Chapter 31 of Acts of 1877, passed March 19, 1877; Chapter 95 of Acts of 1891, passed March 10, 1891, approved March 17, 1891; Chapter 122 of Acts of 1891, passed March 21, 1891, approved March 26, 1891, and Chapter 2 of Acts of 1891, passed March 26, 1891, opproved March 28, 1891.

The Act of March 19, 1877, Chapter 31, applies only to certain classes of foreign corporations. Section 2 thereof required the foreign corporation "desiring to carry on its business" in Tennessee to "first file in the office of the Secretary of State a copy of its charter, or articles of association," and to "cause an abstract of the same to be recorded in the office of the Register of each county in which such corporation proposes to carry on its business or to acquire lands." The Act of March 10, 1891, Chapter 95, merely extends the above act of 1877 to certain other classes of foreign corporations, including building and loan corporations. The Act of March 21, 1891, Chapter 122, of Acts of 1891, by Section 1, extends the Act of 1877 to all foreign corporations, "which may desire to do any kind of business in this State." Section 2 of this act (Chapter 122) provides that all foreign corporations "desiring to own property or to carry on business in this State of any kind or character shall first file in the office of the Secretary of State a copy of its charter, and cause an abstract of the same to be recorded in the office of the Register in each county in which such corporation desires or proposes to carry on its business or to acquire or own property as now required by Section 2 of Chapter 21 of Acts of 1877." Section 3 of Chapter 122 of Acts of 1891 provides "that it shall be unlawful for any foreign corporation to do or attempt to do any business or to own or to acquire any property in this State without first having complied with the provisions of this act, and a violation of this statute shall subject the offender to a fine of not less than $100 nor more than $500, at the discretion of the jury trying the case."

The act of March 26, 1891, Chapter 2, of Acts of 1891, applies only to building and loan corporations and associations. Section 3 thereof provides that no foreign building and loan association or corporation "shall do business in this State unless said association or corporation shall (deposit and continually thereafter) keep deposited in trust for all its members and creditors" certain securities amounting to not less than $25,000 nor more than $50,000, "at the discretion of the State Treasurer."

All such foreign building and loan corporations or associations were further required, "before commencing to do busi-

ness in this State. First, file with the Treasurer of this State a duly authenticated copy of its charter or articles of incorporation; second, file with the Treasurer of this State the certificate of the proper State officer of another State or commencing to do business shall deposit with the said Treasurer of the State or trust company in trust as aforesaid securities of the value of $25,000." The section then defines what the securities shall consist of. This act in Section 6 defines the prohibited business as "loaning its funds to its members, whether issuing certificates of stock which mature at a fixed time in advance or not."

Section 5 of this act is as follows:

"Sec. 5. Be it further enacted, That when by the laws of any other State, Territory or nation, any taxes, fines, penalties, licenses, fees, deposits of money securities or other obligations or prohibitions are imposed on building and loan associations of this State doing business in such other State, Territory or nation, or upon their agents therein, so long as such laws continue in force, the same obligations or prohibitions of whatever kind, shall be imposed upon all building and loan associations of such other State, Territory or nation, doing business in this State, and upon their agents here."

The Legislature of New York, on July 1, 1882, passed an act, being Chapter 409. This act covered various classes of corporations, domestic and foreign, including building and loan associations. By Section 224 of such act all such corporations were required to "transfer and assign to the said superintendent (superintendent of the Banking Department of the State of New York), registered public stocks of the United States, or of the State of New York, or of any incorporated city of this State authorized by the Legislature to the amount in value (and to be at all times so maintained by said corporation) of ten per centum on the paid up capital stock of said corporation, now or at any time hereafter, but not less in any case than $50,000, which stocks must be registered in the name of the superintendent officially as held in trust under and in pursuance to this act" as security for creditors of said corporation, etc.

This Act of New York (Chapter 409, of 1882) continued in force until January 5, 1892, when another act was passed in its place, being Chapter 689. This act (Chapter 689) embraced foreign and domestic corporations, including building and mutual loan corporations. This act (Section 14) provides: "Every such corporation hereafter proposing to engage in such business in this State shall, before engaging in such business, transfer and assign to the superintendent registered public stocks or bonds of the United States or of this Sitate, or of any city, county, town, village or free school district in this State

authorized by the Legislature to be issued to the amount in value and to be at all times so maintained by the corporation of ten per cent. on its paid up capital stock, but not less in any case than $100,000 in cities the population of which exceeds 500,000 inhabitants." The act required this transfer of securities to be in the sum of $100,000, $50,000, $30,000 or $20,000, the same being dependent upon the number of inhabitants in the particular city where the business was to be carried on. Twenty thousand dollars was the lowest amount required. The act provides: "Such stocks must be registered in the name of the superintendent officially in trust" as security for creditors of such corporation.

Section 31 of this act provides that no foreign corporation "shall transact business in this State without the written permission of the Superintendent of Banks, and a written certificate from him stating that such corporation has complied with all the provisions of this chapter applicable to it, and with all the requirements of law, and that it is authorized to transact the business within this State specified therein, and that such business may be safely intrusted to it."

Section 32 of the same act provides: "No foreign corporation, company or association to which this chapter is applicable shall transact any business in this State until it has executed and filed with the Superintendent of Banks a written instrument appointing such superintendent its true and lawful attorney, upon whom all process in any action or proceeding by any resident of the State against it may be served with the same effect as if it existed in this State and had been lawfully served with process therein," etc.

It thus appears that the State of New York by act (Chapter 689 of July 5, 1892) required Tennessee building and loan associations, "before engaging" in business in New York to deposit funds or security therein of from $20,000 to $100,000, and required them to appoint a New York official agent upon whom service of process could be made, and required them to take out a license, and that the previous act made similar requirements.

The Acts of Tennessee, Chapter 2, of 1891, Section 5, made the same reciprocal requirements as to New York building and loan corporations in Tennessee that were required of such Tennessee corporations in New York.

An agreement of counsel herein shows no deposits of securities were ever made by the Eastern Building and Loan Association, and no copy of its charter filed with the State Treasurer, as required by Act, Chapter 2, Acts of 1891, and no copy of the charter ever filed with the Secretary of State until August 11, 1893, or registration of same had under the other acts until

August 15, 1893. (Record, p. 114.) On March 28, 1887, an act was passed in the Legislature of the State of Tennessee, being Chapter 226, the title thereof was "An Act to Subject Foreign Corporations to Suit in This State."

Section 2 thereof provided "that any corporations having any transactions with persons, or having any transactions concerning any property situated in this State, through any agency whatever acting for it within the State, shall be held to be doing business here within the meaning of this act."

The record herein plainly discloses the design of the Eastern Building and Loan Association was to carry on business in any State "where no legal prohibition exists." That in order to so carry on business in Tennessee it had its local agents and local boards therein. That it declined to make loans to members unless they were "connected with and under the jurisdiction of a local board," and declined "all applications for loans unless first approved by the local board." That through the assistance of its local agents and local boards in Tennessee it loaned in Shelby County, Tennessee, alone $36,223.85. In addition to this, the Eastern Building and Loan Association expressly admitted in its bill that at the times in question it was "doing business in the State of Tennessee." Although this business was carried on in Tennessee the said association never complied with any of the terms of the act, Chapter 2, of 1891, of Tennessee. The only compliance with the other acts of Tennessee made by said association was that on August 11, 1893, several years after the transactions in question, it filed a copy of its charter with the Secretary of State of Tennessee and filed an abstract thereof with the Register of Shelby County, Tennessee, on August 15, 1893.

Upon the hearing of the case in the Circuit Court of the United States at Memphis, Tenn., such court rendered a decree on June 4, 1898. A judgment was thereby rendered against H. L. Bedford and wife, Lou M. Bedford, for $5,075.37, and the mortgage executed by H. L. Bedford and wife was ordered to be foreclosed. This decree awarded an execution for any balance due after exhausting the proceeds of the sale of the mortgaged premises.

Record, pp. 98, 99, 100.

The learned Judge hearing the cause in the United States Circuit Court filed an opinion setting forth the reasons for his decision.

See Record, pp. 110-116.

On June 4, 1898, Bedford and wife filed an assignment of errors as to the rendition of the decree of June 4, 1898, and ap-

pealed to the United States Circuit Court of Appeals for the Sixth Circuit, at Cincinnati, O.

Record, pp. 116, 117, 118.

Upon the hearing of the cause by the United States Circuit Court of Appeals, that court certified the case to the Supreme Court of the United States, asking the latter court to decide four question of law.

Record, pp. 122-133.

These questions appear in the record at page 133. H. L. Bedford and wife, Lou M. Bedford, thereupon filed their petition in the Supreme Court of the United States, asking that the whole record should be sent up to that court. The prayer of their petition was granted and the whole record and cause is now before the Supreme Court of the United States.

Record, p. 134.

As no decree was rendered by the United States Circuit Court of Appeals at Cincinnati, the cause being merely certified to the Supreme Court of the United States, the said H. L. Bedford and wife, Lou M. Bedford, now repeat their assignments of error as made by them June 4, 1898. (Record, pp. 116-117.) Such parties respectfully insist that the decree of the United States Circuit Court at Memphis was wrong in the particulars set forth in the former assignments of error, and that no liability whatever exists against either H. L. Bedford or Lou M. Bedford, or the property embraced in the mortgage. Such parties now repeat their former assignments of error, and respectfully insist that this cause should be decided in accordance with the principles claimed in the following:

ASSIGNMENTS OF ERROR.

(1). No decree whatever should have been or should be rendered against H. L. Bedford or Lou M. Bedford for any sum whatever.

(2). No decree for costs should have been or should be rendered against H. L. Bedford or Lou M. Bedford or the mortgaged property or its proceeds.

(3). The lower court should have held and the Supreme Court of the United States should hold that the Eastern Building and Loan Association, of Syracuse, N. Y., had not complied with the terms of the acts of the Legislature of the State of Tennessee, viz.: Act of March 19, 1877, being Chapter 31 of Acts of 1877; Act of March 10, 1891, being Chapter 95 of Acts of 1891; Act of March 21, 1891, being Chapter 122 of Acts of 1891.

The requirements of these acts having not been complied with, when the contracts were entered into, it should have been and should be held that the notes executed by H. L. Bedford and the mortgage executed by H. L. Bedford and Lou M. Bedford were void or unenforceable.

(4). The lower court should have held and the Supreme Court of the United States should hold that the Eastern Building and Loan Association, of Syracuse, N. Y., never complied with the requirements of the act of the Legislature of the State of Tennessee of March 26, 1891, being Chapter 2 of said Acts of 1891, and that the notes executed by H. L. Bedford and the mortgage executed by H. L. Bedford and Lou M. Bedford were void or unenforceable.

(5). The lower court should have held and the Supreme Court of the United States should hold that the contracts evidenced by the notes executed by H. L. Bedford and the mortgage executed by H. L. Bedford and Lou M. Bedford were all Tennessee contracts and not New York contracts, and, as such, governed by Tennessee law.

(6). If the notes executed by H. L. Bedford should be considered as New York contracts, they were such simply in the sense of being payable on their face in New York. The lower court should have held and the Supreme Court of the United States should hold that even if the notes were New York contracts they were executed in Tennessee and were made in evasion of the Tennessee statutes, referred to in Nos. 3 and 4 of these assisnments of error. It should have been and should be held that such notes were void or unenforceable in any court

sitting in Tennessee, whether State or Federal, and that the mortgage to secure them was void or unenforceable.

(7). The lower court should have held and the Supreme Court of the United States should hold that the various statutes of the State of Tennessee, before referred to, applied to and governed the notes executed by H. L. Bedford and the mortgage executed by H. L. Bedford and Lou M. Bedford, and that such statutes were not in conflict with the Constitution of the Unite States or any part thereof. It should have been and should be held that under these statutes the said notes and said mortgage were void or unenforceable.

(8). The lower court should have held and the Supreme Court of the United States should hold that the act of the Legislature of the State of Tennessee, being Chapter 226 of the Acts of 1887, defined what was doing business in the State of Tennessee by foreign corporations. It should have been and should be held that the Eastern Building and Loan Association, of Syracuse, N. Y., was doing business in the State of Tennessee in the sense of such statute, without complying with the laws of Tennessee, and that the notes executed by H. L. Bedford, and the mortgage executed by H. L. Bedford and Lou M. Bedford were void or unenforceable.

(9). The lower court should have held and the Supreme Court of the United States should hold that the laws of the State of New York required corporations of other States having transactions with persons in that State, to comply with the regulations of the New York statutes on such subjects, and that where such statutes had not been complied with contracts that were made were either void or unenforceable in New York. Such being the fact, it should have been and should be held that under the Tennessee laws similar requirements were made of New York corporations seeking to do business in Tennessee as were made of Tennessee corporations seeking to do business in New York. It should have been and should be held that the Eastern Building and Loan Association, of Syracuse, N. Y., in carrying on business in Tennessee never performed any of the reciprocal requirements of the Tennessee laws, inasmuch as it never in Tennessee did any of the things which were required in New York of Tennessee corporations seeking to do business therein. The requirements of the New York law as to corporations of other States seeking to do business in New York have hereinbefore been mentioned and are here referred to.

(10). If the notes executed by H. L. Bedford and the mortgage executed by H. L. Bedford and Lou M. Bedford were not wholly void or wholly unenforceable in Tennessee, then the lower court should have held and the Supreme Court of the

United States should hold that the contracts evidenced by the notes of H. L. Bedford were usurious. It should have been and should be held that the charging of a fixed premium of $460 was usury to that extent. It should have been and should be held that when H. L. Bedford was made to withdraw his shares in the Eastern Building and Loan Association, that he lost all interest in any profits of said association, and agreed to pay a fixed amount in a fixed time, and that thereby the transaction became and was usurious. It should have been and should be held that this was the law of Tennessee as well as of New York, and that the Eastern Building and Loan Association, of Syracuse, N. Y., had only the rights which a Tennessee corporation would have had. This being so, H. L. Bedford should be credited with the full amounts which he had paid and all usury should be eliminated, it being apparent that much more than the sum he received and 6 per cent. interest thereon per annum as allowed by Tennessee law is sought to be gotten by the Eastern Building and Loan Association, of Syracuse, N. Y.

(11.) It should have been and should be held that no estoppel existed against H. L. Bedford or Lou M. Bedford to plead the invalidity of the notes or mortgage.

The substance of the above assignments of error is, the notes and mortgage in question are void or unenforceable in Tennessee under Tennessee law, and that such law should govern. If, for any reason, the said notes and mortgage are unenforceable to any extent that then usury exists in the transaction, and such usury should be eliminated.

All of the questions suggested by the assignments of error are fully discussed hereinafter. While the whole record is before the Court, it is deemed best to discuss such questions in reference to the questions propounded in the certificate from the United States Circuit Court of Appeals and in the order suggested thereby. The questions of law propounded in said certificate (Record, p. 133) are as to the validity or invalidity of the transactions in question, and as to the right or power of a United States Court sitting within a State to decline to enforce the State law, denying the enforcement of contracts against its laws.

Of course the decree providing for execution against Mrs. Bedford was wrong. She had not signed the notes and was a married woman.

ARGUMENT.

AS TO THE FIRST QUESTION SUBMITTED.

The first question propounded by the Circuit Court of Appeals (Record, p. 133) is:

"Was the validity of the notes signed in Tennessee by the maker, manually delivered by him to the soliciting agent of the association at Memphis, to be transmitted to the association at Syracuse for the acceptance of the association at that place and payable at Syracuse, to be determined by the laws of Tennessee or of New York?"

We do not understand this question to mean that the Circuit Court of Appeals concluded that the contract in question had not been closed when the notes were executed in Tennessee, or that it was closed when the notes arrived in New York by the acceptance of the association there. We understand the question to be based simply on the idea that the notes were payable in New York.

Viewed from the Tennessee standpoint, there are two classes of New York contracts, one where the contract is executed in Tennessee and payable in New York, and the other where the contract is executed in New York.

We contend that the contract in question was closed in Tennessee, when Bedford executed the notes and mortgage, and that if his contract be considered a New York contract, it is simply one in the sense of the notes being payable on their face in New York. In the statement of facts herein we have shown that Bedford's application for a loan did not fix any terms except to the extent that he wanted a loan for six and a half years of $4,600, and offered to mortgage his land to secure such loan. We have shown that the approval of May 18, 1891, by the association, did not close the contract, but that it was merely an assent by it to making a loan, and that the terms upon which a loan would be made were first fixed when the Eastern Building and Loan Association had the notes and mortgage drawn up. The contract was closed and made when Bedford, in Tennessee, signed these notes and mortgage. When they were sent on to New York after being signed it was not for acceptance by the association in the sense that the contract was to be closed by the association's agreeing to it then. The association had previously fixed the terms and the contract had been closed by Bedford's acceptance thereof, evidenced by his execution of the papers.

"A contract is made when both parties agree to it, and not before. * * * If the contract is in writing, it is made when all the parties have executed, and therefore it is not made until the latest party has put to it his name and seal or both, as may be required."

2 Parsons on Contracts, paragraph 95.

In Campania, etc. vs. Spanish Company, 146 U. S., 497, it is said: "But if there is any part of it (contract) in regard to which the minds of the parties have not met, the entire instrument is a nullity as to all its clauses."

The only contract signed was that evidenced by the notes and mortgage executed in Tennessee.

Where writings are contemplated there is no contract until they are executed.

Ambler vs. Whipple, 20 Wall., 556.
Bourne vs. Shapleigh, 9 Mo. App., 70.
Com. Tel. Co. vs. Smith, 47 Hun., 501.
Sydney Glass Works vs. Barnes, 86 Hun., 378.
Sparks vs. Pittsburgh Co., 159 Pa. St., 295.
Gulich vs. Alford, 61 Miss., 225.
Eads vs. Carondelet, 42 Mo., 113.
Water Commrs. vs. Brown, 32 N. J. L. (3 Vroom), 504.
Riggs vs. Magruder, 2 Cranch C. C., 143.
Spinrey vs. Downey, 108 Cal., 666.
Des Bonlets vs. Gravier, 1 Mart. (N. S.), 420.
Frederick vs. Faisnacht, 30 La., 113, Pt. 1.
Avendano vs. Arthur, Id., 316.

"An offer of a bargain by one person to another imposes no obligation upon the former, unless it is accepted by the latter upon the terms on which it was made. Any qualification or a departure from them invalidates the offer unless the same be agreed to by the party who made it."

Tilly vs. County of Cook, 103 U. S., 161.
Darlington vs. Foote, 16 Fed. Rep., 646.

"A proposal to accept or an acceptance upon terms varying from those offered is a rejection of the offer and puts an end to the negotiation unless the party who made the original offer renews it or assents to the modification suggested."

R. R. vs. Columbus, 119 U. S., 151.

Insurance Co. vs. Young, 23 Wall, 107, is directly in point. In that case the company issued a policy slightly different in terms from the one applied for. It was held there was no contract, as the applicant died before assenting to the policy as issued.

See also Sydney Glass Works vs. Barnes, 86 Hun., 378.
Derrick vs. Monette, 73 Ala., 75.

In Holder vs. Aultman, 169 U. S. 89, it was held: "A contract is made when and not before it has been executed or accepted by both parties, so as to become binding on both." In that case the contract was held to be an Ohio contract, simply because of an express stipulation therein that it was not to be valid unless approved in Ohio.

We submit that the contract was closed in Tennessee when the notes and mortgage were executed in that State and given to the association's agent therein, and the validity thereof is to be determined by Tennessee law. A contract illegal where made cannot be made good merely because it is payable elsewhere.

The case of Scudder vs. Union National Bank is in point. It was a suit in Illinois on a draft drawn and accepted in Illinois on a firm in Missouri, the draft being payable in Missouri. The contract was an invalid contract under the law of Missouri, but valid under the law of Illinois. The question presented was whether the law of Illinois, the place of contract, or the law of Missouri, the place of performance, should govern. The Court said: "Matters bearing upon the execution, the interpretation and the validity of a contract are determined by the law of the place where the contract is made. Matters connected with the performance are regulated by the law prevailing at the place of performance.

"Matters respecting the remedy, such as the bringing of suits, admissability of evidence, statutes of limitation, depend upon the law of the place where the suit is brought."

Scudder vs. Union National Bank, 91 U. S., 412, 413.

A citizen in Illinois borrowed money from a Connecticut corporation, making notes payable in New York, secured by a mortgage on land in Illinois. Under the law of New York the contract was void for usury, while under the law of Illinois the principal and ten per cent. could be recovered. The Court held the contract was governed by the Illinois law, as it was made in Illinois and secured by mortgage in Illinois, thus following the rule in Scudder vs. the Union National Bank.

Fowler vs. Eq. Tr. Co., 141 U. S., 384.

The case of Tilden vs. Blair also lays down the rule here contended for. That was a suit in New York on a draft drawn in Illinois on parties in New York, and expressly payable in New York. The court held that the contract was governed by the law of Illinois, the place where the contract was made. The court held that though the acceptance was made in New York, it must be considered as made in Illinois, as the draft was sent back there to be negotiated and "there was no operative acceptance until the draft was negotiated." The court said: "Nor is the law of the contract changed by the

fact that the acceptance was made payable in New York—the place of payment was doubtless determined for the convenience of or the facility and negotiation of the draft."

Tilden vs. Blair, 21 Wall, 246, 247.

The court held that sending the bill to Illinois to be negotiated was exactly as if the defendant had accepted the draft in Illinois, and that he had a right to make an Illinois contract, and had done so.

21 Wall, 247.

The rule that contracts to be performed in another State are sometimes supposed to be valid as entered into with a view to the law of such State is subject to the exception "that where a contract is declared void by the law of the State or country where it is made it cannot be enforced as a valid contract," though it would have been valid in the State where it was to be performed.

Hyde vs. Goodnow, 3 N. Y., 269.

In Liverpool and G. W. Steam Co. vs. Phoenix Ins. Co., 129 U. S., 397, it was held that a contract of affreightment made in an American port by an American shipper with an English steamship company, doing business there for the shipment of goods there, and their carriage to and delivery in England, where the freight was payable in English currency, was an American contract, although the contract exempt[ed] the parties from negligence. This exemption was valid under English law, but invalid under American law. The loss was occasioned by the vessel going ashore upon the coast of Great Britain. The court, in this case, examines a great number of authoritie and (129 U. S., 453) says the rule is: "That contracts are to be governed as to their nature, their validity and their interpretation by the law of the place where they are made, unless the contracting parties clearly appear to have had some other law in view." The court held (pp. 458, 459) that the parties did not, on making the contract, have in view the law of England, though the carrier was an English company and the goods were to be carried to England and the freight to be paid in English money. The parties were held to be governed by American law, although that law made the contract of exemption void, which was good under English law. The court (p. 462) did not determine what would have been the effect if the contract had expressly provided that the law of England should govern. This case clearly and distinctly holds that if the parties can avoid the law of the place where the contract it made that it has to be done in express terms and by express contract. On page 458 the court said the law of the place where the contract was made governs, "unless the parties, when entering into the contract, clearly

manifest a mutual intention that it should be governed by the law of some other country." (See also United States vs. North Carolina, 136 U. S., 222.)

In the case of London Assurance Company vs. Companhia De-Moagens, 167 U. S., 161, the court held the parties had expressly contracted with a view to English law, and said this could be done *"so long as in a case like this the foreign law is not "in any way contrary to the policy of our own. See Liverpool "and G. W. S. Co. vs. Phoenix Ins. Co., 129 U. S., 397, 446, 453."*

Clearly Bedford in the present case had no intention that the contract should be governed by the law of some other place than the one where he executed it. He never had any direct communication with the Eastern Building and Loan Association. He found it doing business in Tennessee, and all of his commuications with it were through its agents in Tennessee. He merely in Tennessee executed notes promising to pay in New York; but, as a matter of fact, he paid in Tennessee. He had the privilege of paying in Tennessee. (Record, 63 (4.) He did not contract with a view to or agree to be bound by any law except that of Tennessee. On the other hand, the Eastern Building and Loan Association were doing business in Tennessee and had the papers executed there, as a part of such business, and the record shows that, conceiving Tennessee law would govern the association, sought legal advice in Tennessee as to its rights under Tennessee law to loan money in Tennessee, after the passage of the Tennessee laws (Record, pp. 91-92), and acted on this advice. If any demonstration was needed, the fact that this advice was asked and acted upon demonstrates that the Eastern Building and Loan Association never intended to contract with a view to New York law, but that it recognized Tennessee law applied to all contracts as to loans in Tennessee.

It has been repeatedly held that "when the language of a contract is ambiguous the practical interpretation of it by the parties is entitled to great if not controlling influence."

Topliff vs. Topliff, 122 U. S., 121.
Chicago vs. Sheldon, 9 Wall, 50.
Lawler vs. Bangs, 2 Wall, 728.
R. R. vs. Trimble, 10 Wall, 367.
Steinbach vs. Stewart, 11 Wall., 576.
Coghlan vs. R. R., 142 U. S., 113.

The admission of the bill herin (Record, p. 4) that the association was "doing business" in Tennessee when the loans were made, is also a practical construction of its own acts by the association.

"An admission by the pleadings cannot be contradicted by the evidence, and is conclusive. (Van Dyke vs. Maguire, 57

N. Y., 431.) That which the parties have agreed to in their pleadings shall be admitted, though the jury find otherwise."

7 Bacon's Abridgement, 459.

McFarren vs. Taylor, 3 Cranch, 270, and note to same.

Book 2, Lawyer's Co-Operative Pub. Co., Edition Sup. Ct., U. S. Reports, 436.

In Horn Silver Mining Co. vs. New York, 143 U. S., 315, the admission in the answer that the corporation was doing business in New York was held conclusive.

The claim in the answer that the business was "lawfully" done (Record, p.), is, of course, a mere legal deduction that the Eastern Building and Loan Association cannot make for itself in its own case.

Rodgers vs. Rodgers, 6 Heiskell (Tenn.), 495.

There is nothing in the case of Coghlan vs. R. R., 142 U. S., 101, inconsistent with anything advanced in this brief. That case refers to Liverpool, Etc., Co. vs. Phoenix Insurance Company, and Trust Co. vs. Fowler, before cited approvingly (142 U. S., 110-112). Coghlan vs. R. R. merely held that when bonds were payable in England that the rate of interest after maturity was governed by the law of England and not of South Carolina. It will be observed that the English rate was less than that of South Carolina, and therefore the English rate was legal in both countries. It has been often held that parties who are allowed to contract in a certain country can make their obligations payable in another country, and can contract to pay the interest as allowed by such country. Coghlan vs. R. R. merely affirms this common doctrine. This case (142 U. S., 112) also explains the case of Tilden vs. Blair and Eq. Tr. Co. vs. Fowler, hereinbefore cited, and shows that the decisions in those cases were to some extent based on an Illinois statute providing that where Illinois contracts were payable in other States that the Illinois law might prevail. The Court in Coghlan vs. R. R., 142 U. S., 111, recognizes the general rule "that the lex loci contractus determines the nature and legal quality of the act done, whether it constitutes a contract," etc. The Court adds: "But a contract made in one country may contemplate the execution of deeds or other contracts, making payments or doing other legal acts in another, in regard to which the law of the foreign country where the act is to be done will govern the contract." The Court recognizes the doctrine "that the law of the country where a contract merely personal is made determines its validity." The Court says (142 U. S., 109): "All the terms of the contract must be examined in connection with the attendant circumstances to ascertain what law was in view of the parties when the contract was exe-

cuted." The Court was referring in this to the consequences of non-payment in England as to what rate of interest would govern. The Court was not referring to the validity of the antecedent contract made in South Carolina, and which had to be determined by the law of South Carolina, but simply to the performance or consequences of non-performance, thus offering, Scudder vs. Bank, supra.

Neither is there anything in the case of Pritchard vs. Norton, 106 U. S., 124, inconsistent with anything advanced in this brief. In that case the Court (106 U. S., 136) says: "The law we are in search of which is to decide the nature, interpretation and validity of the engagement in question is that which the parties have either expressly or presumptively incorporated into their contract as constituting its 'obligation.'" The Court then (page 138) sets out all the facts leading up to the conclusion that the parties intended to contract with a view to the law of Louisiana. It will be observed that this contract was in relation to things that had taken place and would take place in Louisiana. It was essentially a Louisiana transaction throughout, and no claim could be made that there was any evasion of New York law. Everything leading up to the contract had been done in Louisiana, and what was to be done thereafter was to reimburse the party in Louisiana for what he had done there. The case before the Court is not similar to Pritchard vs. Norton. In the present case the Eastern Building and Loan Association was confeddely doing business in Tennessee, and the notes and mortgages were executed in Tennessee to it, as a part of such general business. The laws of Tennessee forbid this business, and contracts made in that forbidden business are necessarily void. It is simply an evasion of law to claim that such contracts are good when made in Tennessee, if they are payable elsewhere.

It will be observed that in all of the cases where the parties in one State were allowed to contract with reference to the law of some other State, that it was not in relation to or growing out of business done in the former State, but was in relation to lawful acts, which could be performed in the latter State. In such cases there was no evasion of State law, and the contracts in question were not the outgrowth of any business forbidden in the former State.

The fact that notes are executed in one State, payable in another, even if no prohibitory law existed, does not indicate that the law of the State where payable governs.

To contend that it does, where the business in which such notes are given is prohibited by the law of the State where the notes are executed, sanctions an evasion of that law.

Where the contract "is invalid or void by the law of the

country where it is made" it will not be enforced, though payable elsewhere.

Pope vs. Nickerson, 3 Story, 484.

In Andrews vs. Pond the place of payment was disregarded as the transaction was illegal in the place where the draft was drawn.

Andrews vs. Pond, 13 Peters, 77, 78.

"The law of the place of payment does not necessarily govern the rate of interest which may be contended for."

Vleit vs. Camp, 13 Wis., 198.

A loan is an Alabama contract when the application is made, the money paid over to the borrower, and the notes and mortgage executed in that State, although the debt is made payable in New York, and the money was sent from that State to the mortgagee's agent in Alabama to be paid over on the execution of the paper."

Am. F. L. M. Co. vs. Sewall, 13 L. R. A., 299; 92 Ala., 163.

Where a policy issued in New York and the premiums were payable there, it was yet held to be a Missouri contract, subject to Missouri law, which it attempted to evade.

Eq. L. Ins. Co. vs. Clements, 140 U. S., 226.

In this case the provision in the policy, though it was issued in New York (page 234) was characterized as on "ineffectual attempt to evade and nullify the clear words of the statute" of Missouri

A soliciting agent in Missouri forwarded an application for insurance to New York, and the insured agreed that the policy was to be construed "according to the laws of the State of New York." The State of Missouri had passed certain laws as to the liability under policies. The Court held that the law of Missouri governed, notwithstanding the interstate character of the transaction and the contract of the parties, and that the power of the State over foreign corporations was not less its power over domestic ones.

New York Life Ins. Co. vs. Cravens, U. S., page —, decided by Supreme Court of U. S., May 28, 1900.

A loan was made on Arkansas land and the notes were payable in New York. The Court held it was an attempted evasion of Arkansas law and administered that law.

Banks vs. Flint (Ark.), 10 L. R. A., 460. 54 Ark., 40.

A similar case is Thompson vs. Edwards, 85 Ind., 414

Notes were executed in Georgia, payable in New York; held, validity thereof must be determined by Georgia law

Banks vs. R. R., 2 Lea (Tenn.), 679.

"The law of the State in which a note for money loaned is given governs on the question of usury, where it is secured by

a deed of land located in the State and part of the money representing the usury was deducted from the loan and never paid over to the borrower, although the note is expressly made payable in another State."

Martin vs. Johnson (Ga), 8 L. R. A., 170, 84 Ga., 481.

In United State Savings and Loan Association vs. Scott (Ky.) 34 S. W. Rep., 236 (98 Ky., 695) it was held a foreign building and loan association doing business in Tennessee could charge no higher rate of interest than was chargeable under Kentucky law. The Court held any higher charge of interest was an attempted evasion of the Kentucky law, "and this though it be specifically provided that the contract is made with reference to the laws of the foreign State. Such provision only make the intent to evade the more manifest." In this case a resident of Kentucky became a member of a Minnesota corporation and borrowed money secured by a mortgage on Kentucky land. The note was both dated and payable in Minnesota, and said: "This note is understood to be made with reference to and under the laws of the State of Minnesota."

See also Pierce vs. People, 106 Ill., 22, 23.

In the case of Andrews vs. Pond, 13 Peters, 77, 78, before referred to, the draft in question contained usury and was payable in Alabama, under New York law, the transaction was void, but under Alabama law the principal could be recovered. The suit was brought in Alabama and the Court held the New York law applied, saying (23 Peters, 78): "A contract of this kind cannot stand on the same principles with a *bona fide* agreement made in one place to be executed in another. In the last mentioned cases the agreements were permitted by the *lex loci* contractors and will be enforced there if the party is found within its jurisdiction. But the same rule cannot be applied to contracts forbidden by its laws and designed to evade them. In such cases the legal consequences of such an agreement must be decided by the law of the place where the contract was made. If void there, it is void everywhere, and the cases referred to in Story's Conflict of Laws, 203, fully establish this doctrine."

The Eastern Building and Loan Association could not carry on business in Tennessee asd evade the Tennessee law in respect thereto by taking notes payable elsewhere.

The fact that the Eastern Building and Loan Association construed the Tennessee law wrongly cannot aid it. It was bound to know the law. The situs of the contract cannot be affected by the ignorance or knowledge of the association. If the association thought this business legal, that simply shows it thought and intended the contract to be a Tennessee con-

tract; but if it intended otherwise that would be an atttempted evasion of the Tennessee law. The fact that the association was mistaken as to its construction of Tennessee law cannot make it a New York contract. To claim that Tennessee law does not apply is simply to attempt an *ex post facto* evasion of such law.

The legality of a contract made in Missouri, as to lottery tickets, was held to be governed by the law of that State, though the lottery was located elsewhere.

Russell vs. McAuliff, 141 Mo., 40.
35 S. W. Rep., 1135.

The cerificate of the Circuit Court of Appeals herein calls the agents of the Eastern Building and Loan Association in Tennessee "soliciting agents." No matter how limited their authority was, the association carried on business in Tennessee through them, and brought about the very business in controversy. Where these agents are sought to be disconnected from their principal it would appear to be an attempt to evade Tennessee law. They did not represest Bedford, and the bill (Record, p. 1) admits the association carried on business in Tennessee.

Any claim on behalf of the association based on the idea that the agents of the association were soliciting agents would seem to be like the unavailing attempts of corporations to make their own agents the agents of the parties they transact business with. In this connection see:

N. Y. L. Ins. Co. vs Russell, 77 F. R., 103, 104, citing many authorities.

In that case the Court (p. 104) says the design of the attempts to limit the authority of agents "is to enable the insurance company to escape from the necessary obligations and liabilities imposed by the law of agency on a principal who commits the conduct of his business to an agent."

In considering this first question propounded by the United States Circuit Court of Appeals, it should be remembered that while the notes were on their face payable in New York, that as a matter of fact they were allowed to be, and were paid in Tennessee to the local treasurer of the association. These payments were authorized to be so made by the charter of the association and its by-laws. The law is plain that such local treasurer and the other agencies of the association were its agents, and that they cannot in any sense be considered as Bedford's agents, though the charter and by-laws should attempt to make them such.

Knights of Pythias vs. Withers, 177 U. S., 261.
Murphy vs. I. O. S. & D. of Jacob, 27 So. Rep., 624.

It is competent for the Legislature to provide a penalty

against any agent of a foreign insurance company who shall act without authority from the State, although the contract is made out of the State, and provides that he shall be deemed the agent of the insured.

Pierce vs. People, 106 Ill., 11, 46 Am. Rep., 683.

In the above case the court said (46 Am. Rep., 688): "It may "be admitted that it was incompetent for the Legislature in "endeavoring to accomplish this object to say that a citizen of "this State should not make a contract with a foreign com- "pany not having the right to do business here for the insur- "ance of property in this State, yet the Legislature in such "case would clearly have the power to declare all such con- "tracts void when sought to be enforced here on the ground "that they are contrary to the public policy of the State."

Acts providing no action shall be brought for liquors sold in other States with intent to enable one to violate law are not unconstitutional, though the sales were valid by law of that State where made.

Reynolds vs. Geary, 26 Conn., 179.
Davis vs. Branson, 6 Iowa (6 Clark), 425.
Barrett vs. Delano (Me.), 14 Atl. Rep., 248.
See also Wooten vs. Miller, 7 S. and M. (Miss.), 380.

When the Eastern Building and Loan Association admits, as it did, in its bill (Record, p. 2), that it carried on business in Tennessee, and then claims that its agents had little authority, it is a plain attempt to evade Tennessee law.

In 1887 the Legislature of the State of Tennessee passed a law as to foreign corporations, the same being chapter 226 of the acts of 1887. Section 2 of this act says: "Be it further enacted, That any corporation having any transactions with persons, or having any transactions concerning any property situated in this State, through any agency whatever acting for it within the State, shall be held to be doing business here within the meaning of this act."

This act (Ch. 226 of 1887) was held to be valid by the Supreme Court of Tennessee in 1889 in the case of Telephone Co. vs. Turner, 88 Tenn., 226.

The case of Life Ins. Co. vs. Spratly, 99 Tenn., 322, also construed this statute. This act provided that transactions "through any agency whatever acting for it" constituted doing business in Tennessee. This decision was affirmed by the Supreme Court of the United States January 30, 1899. Conn. M. L. Ins. Co. vs. Spratly, 172 U. S., 611.

A contract of insurance on property in the State with a foreign insurance company, irrespective of where made, is an attempt to do business within the meaning of the statutes for-

bidding foreign corporations doing business within the State unless certain conditions are complied with.

Conn. M. F. I. Co. vs. Sharpless, 12 Pa., Super. Ct., 333.

It has been often held that parties cannot go out of a State to evade its law, and then claim the transaction outside of such State, was valid. This is true even as to marriages.

"The marriage in another State where it is lawful of a divorced man and his paramour, who go there to evade the law of their domicile, which prohibits their marriage during the life of the former wife, is not valid in the latter State."

Re. Stull, 183 Pa., 625; 39 L. R. A., 538.
Pennegar vs. State (Tenn.), 2 L. R. A., 703
State vs Tutty (Ga.), 7 L. R. A., 50.
3 Pickle (Tenn.), 244

A contract to marry made in Alabama, where it was illegal, to be performed in New York, where it was legal, was held void in New York

Campbell vs. Crampton, 2 F. R., 423.

The place of performance cannot be looked to where the object is to avoid the usury laws.

Parham vs. Pulliam, 5 Cold. (Tenn.), 506, 508, 509.
Mix. vs. Ins. Co., 11 Ind., 117.

One who agrees not to sell lumber nor interfere with the lumber business in a certain town cannot sell lumber there to be delivered in other places.

Eagle vs. Troup, 68 Ill. Apn. 302.
Bolton vs. Street, 3 Cold. (Tenn.), 506, 509.

Contracts which are lawful in the State where made may be criminal and not enforced in another State as against their policy.

Gooch vs. Faucette, 39 L. R. A. (N. C.), 835.
Pope vs. Hanke, 28 L. R. A., 568 (155 Ill, 617).
Ex Parte Lanv, 31 L. R. A., 822 (Va.)

It has often been held that where there is a doubt as to whether the law of the forum or the lex loci contractus should prevail, the former will always be given the preference.

2 Kent, Com., 461.
Story on Conflict of Laws, 326, 328.
Bank of Columbia vs. Walker, 14 Lea (Tenn.), 307.
Ramsey vs. Stevenson, 12 Am. Dec., 468, and note, 470.
Woods vs. Weeks, 7 Lea (Tenn.), 47.

In Endlich on Interpretation of Statutes the subject of evasion of statutes is treated of in sections 138 to 145. These sections show numerous fruitless attempts to evade law, and show clearly that the form of the transaction is disregarded.

An amusing case is mentioned by Mr. Endlich in section

144, where he says: "A beer shop keeper who is licensed to sell beer only to be drunk off the premises evades the act if he sells beer to be drunk on a bench which he provides for his customers, close t ohis shop, the intention making it substantially and in effect a sale for consumption on the premises," citing authorities.

Where the Eastern Building and Loan Association did business in Tennessee and had notes executed to it there the invitation by it to its customer to pay in New York would seem to be as plain an evasion of Tennessee law as the use of the bench in the beer shop case. The corporation in effect said to its customer: We will do the business in Tennessee, but you can walk out of or send out of the State to settle up.

In section 521 of his work Mr. Endlich says: "A constitutional provision as well as a statutory one is to receive such a construction as will frustrate attempts to evade its legitimate operation."

It is perfectly apparent that the Tennessee statutes on the subject of foreign corporations will be practically repealed or destroyed if it be held that their provisions are not applicable where notes are executed in Tennessee payable in a foreign State, no matter whether the contract be considered as concluded when the notes are executed in Tennessee, or when they arrive in the foreign State and are accepted there. No forign corporation carrying on a general business in Tennessee will subject itself to the pains and penalties of the Tennessee law when they can be evaded by the mere form in which the contracts are made. The view that this cannot be done is fully sustained by Hooper vs. California, 155 U. S., 658, where the court said: "If the contention of the plaintiff in error were admitted, the established authority of the State to prevent a foreign corporation from carrying on business within its limits, either absolutely or except upon certain conditions, would be destroyed. It would only be necessary for such a corporation to have an understanding with a resident, that in the effecting of contracts between itself and other residents of the State, he should be considered the agent of the insured persons, and not of the company. This would make the exercise of a substantial and valuable power by a State government depend, not on the actual facts of the transaction over which it lawfully seeks to extend its control, but upon the disposition of a corporation to resort to a mere subterfuge in order to evade obligations imposed upon it. Public policy forbids a construction of the law which leads to such a result, unless logically unavoidable."

Where contracts are prohibited by statute "the illegality of the contract cannot be purged by crossing a boundary line

to solemnize it." The subjects of a State cannot evade its laws in this manner.

Sec. 696, Wharton on Conflict of Laws.

Contracts made outside of a State to smuggle goods into it will not be enforced, whether the parties are citizens or foreigners.

Sec. 246, Story on Conflict of Laws.

The State of Tennessee had complete control of Bedford, its citizen, and could prevent him making any contract that would practically be an evasion of its laws. The State of Tennessee likewise had complete control of the Eastern Building and Loan Association, which was doing business therein, and could prevent its evasion of the State laws as to the transaction of such business.

If the view we submit be not correct, then no State practically can legislate against foreign corporations or impose terms thereon as to carrying on business in such State. These corporations would all do exactly as the Eastern Building and Loan Association did; that is, carry on their business in such State, though forbidden by law, and evade the provisions of such law by taking notes payable outside of such State.

In this view it would not make a particle of difference whether the contracts made in this general business carried on in Tennnessee by the foreign corporations were closed by the giving of notes, executed in Tennnessee, payable in the foreign State, or by the acceptance of such notes when they were sent on to such foreign State. In either view the foreign corporations carry on the business in Tennessee, get the benefit thereof, and ignore the Tennessee law completely, unless they choose to obey it.

We have shown, as we think, that the contract was closed in Tennessee, and that it is immaterial that the notes are payable in New York.

In Miller vs. Tiffany, 1 Wall, 310, speaking in reference to the right of parties to have contracts governed by the law of the place of performance, it is said, "These rules are subject "to the qualification that the parties act in good faith, and "that the form of the transaction is not adopted to disguise "its real character. The validity of the contract is determined "by the law of the place where it is entered into. Whether void or valid there, it is everywhere."

We submit further, that if the contract was closed in New York, that the same rules exactly apply as we have hereinbefore contended for.

It appears that the Eastern Building and Loan Association carried on a general business in Tennessee, and that all of its loans were made precisely in the same manner. We sub-

mit that where a foreign corporation has its agents in Tennessee, who assist it in getting up business there, and where such business is carried on in Tennessee, that even if the contracts procured in such business be technically closed outside of Tennessee, that where the business is forbidden by Tennessee law, it is an evasion of that law to claim that it is not applicable.

In the case of Allgeyer vs. Louisiana, 165 U. S., 587, the court quotes approvingly: "The fourteenth amendment, however, does not guarantee the citizen the right to make within his State, either directly or indirectly, a contract the making whereof is constitutionally forbidden by the State." Can a corporation carrying on business in a State "indirectly" evade its laws against such business by the mere form of all its contracts taken therein?

In Holden vs. Hardy, 169 U. S., 391, the court refers to Allgeyer vs. Louisiana, and says: "This right of contract, "however, is itself subject to certain limitations which the "State may lawfully impose in the exercise of its public pow- "ers."

In U. S. vs. Joint Traffic Association, 171 U. S., 572, 573, the court said: "Notwithstanding the general liberty of contract "which is possessed by the citizen under the constitution, we "find that there are many kinds of contracts which, while "not in themselves immoral or *mala in se*, may yet be pro- "hibited by the legislation of the States or in certain cases "by Congress."

This court further held that the agreement in question was not the less illegal because the rates fixed were reasonable and that "the effect upon interstate commerce must not be in- "direct or incidental only."

See also Addystone Pipe and Steel Company vs. U. S., 175 U. S., 211, where it was held the citizen could not enter into contracts which "would, if performed, result in the regulation of interstate commerce."

Now, it is apparent that the power of the States within their sphere is equally as great as that of Congress within its sphere, and that proper legislation, whether by the one or the other, cannot be evaded by the mere form of the contract. It is the result that is looked to.

In Allgeyer vs. Louisiana, 165 U. S., 579, there was no question of evasion of law. The contract therein was made in New York, and the insurance company had no agents in Louisiana, and was not doing business there. This case further refers to Hooper vs. California, 155 U. S., 618, approvingly, which case we rely upon as authority herein.

The agreed statement of facts (Record, pp. 90-92) shows in

substance that many loans were made by the complainant, not only in Shelby County, but also in other counties in the State of Tennessee, both before and after the passage of the acts of the Tennessee Legislature under consideration. "That the complainants *furnished its agents in Shelby County, Tennessee*, with printed blanks to be used in effecting loans and other transactions with parties in Tennessee." The application for charters, the applications for loans and the appraisers' report and affidavits of appraisers and applicant, the application for advances, were all upon blanks furnished by the association. (See Record, pp. 82-83.)

It can be safely said that everything that was done in this matter was done and performed by the parties in Shelby County, State of Tennessee, except the mere formal function of adoption by the association at its home office in New York, the recommendation and the report of the agent at Memphis, Tennessee.

We therefore submit, without argument, that no amount of paraphrasing and no argument or subterfuge can hide or conceal the fact, first, that the complainant had a regularly constituted agency in Shelby County, Tennessee; and, second, that this agency performed in pursuance of its regularly constituted authority all the acts and functions that were necessary to be performed and which *were conditions precedent* to the granting of the loan.

The evidence not only shows that "all of the verbal acts of the parties were done and performed" in Tennessee" (this is the expression of the Court in Allgeyer's case, 165 U. S., 587, to the point that if when true the statute applies) but that the complainant had a regularly constituted agency in Tennessee, and was not only prepared to, but actually did do "a regular land office business" in the State. Many loans were made in the State, and the business it did in Tennessee was the business it did, or was possible for it to do, in that or in any other State. *If the complainant was not doing business in Tennessee, then it was impossible for it to do business in any State, other than that of its creation, because it carried on in Tennessee the business for which, under its charter, the corporation was created.* It is unnecessary to enter into an analytical discussion of what is necessary to constitute the "doing of business," as that question has been so frequently passed upon by the courts as to be no longer an open question. The question in all cases is simply the construction and interpretation of the statute, and the now generally accepted construction is the one found in Thompson on Corporations, Vol. 6, Sec. 7936, to-wit:

"The general conclusion of the courts is that isolated transactions, commercial or otherwise, taking place between a for-

eign corporation, domiciled in one State, and citizens of another State, are not doing or carrying on of business by the foreign corporation, within the latter State, but that these prohibitions are leveled against the act of foreign corporations entering the domestic State by their agents and engaging in the *general prosecution of their ordinary business therein.*"

Continuing, this author says, in the same section, "but where the constitutional provision was against 'doing *any* business in this State' without complying with the specific conditions, it was held that the doing of a *single act* of business if it be in the exercise of a corporate function, was as much prohibited as the doing of a hundred such acts, and was just as much opposed to the policy of the Constitution, which was to protect the domestic citizens against the fraud and imposition of insolvents and unreliable corporations, and to place them in an attitude to be reached by legal process in domestic courts. The making of a *single loan secured* by mortgage, by a corporation which had not complied with the conditions, was, therefore, within the prohibition, in such a sense that an action to foreclose the mortgage could not be maintained in the domestic courts."

Thompson on Corp., Vol. 6, Sec. 7936.
State vs. U. S. Bank, 108 Ala., 3.

Now, our contention is that complainant had not complied with any of the statutes under consideration. Sec. 3 of Chap. 122 of the law of 1891 provides that, "It shall be unlawful for any foreign corporation to do or attempt to do *any* business." Consequently it follows, under the rules laid down by Mr. Thompson, *supra*, that the doing of a single act of business is a violation of this statute. Cooper M. Co. vs. Ferguson, 113 U. S., 734, is no answer to this, as the Colorado statute provided that the corporation should have one or more known places of business, and the court held that this implied a purpose at least, to do more than one act of business (page 734). The building and loan act, Ch. 2, of the Acts of 1891, Sec. 3, provides that, "every building and loan association organized under the laws of any State, territory or foreign government, shall, *before commencing to do business within this State, file with the Treasurer of this State a* "copy of its charter, and second, file with the Treasurer of this State certain securities." How can it be seriously argued that the complainant has not violated both of the acts under consideration is absolutely incomprehensible. To use the expression, *supra* of Mr. Thompson, the complainant corporation was "engaging in the general prosecution of its ordinary business therein." The contract sought to be enforced in Cooper M. Co. vs. Ferguson, 113 U. S., and Holder vs. Aultman, 169 U. S., were declared valid, sim-

ply because they were not in violation of the statute then under consideration, and both of the above authorities sustain the contention of appellants herein.

It was not necessary that the Eastern Building and Loan Association should have either a dimicile or an office in Tennessee, in order to carry on business there. This was expressly so decided in Myers vs. Wetzel, 35 S. W. Rep. (Tenn.), 896.

See also Turcott vs. Yazoo, etc., R. R,, 45 S. W. Rep., 1068, 101 Tenn., 102.

Section 2 of Chapter 226 of Acts of Tennesse defined what was "doing business" in Tennessee by foreign corporations not domiciled or having offices in Tennessee. "Any transaction," "through any agency whatever," in Tennessee under this act was doing business in Tennessee. This act was held valid by the Supreme Court of Tennessee in Telephone Co. vs. Turner, 12 S. W. Rep., 544, 88 Tenn., 266, and Ins. Co. vs. Spratly, 99 Tenn., 322. The last case was affirmed by the Supreme Court of the United States January 30, 1899.

Corporations may carry on business at places where process could not be served on them. This is distinctly recognized in—

Shields vs. R. R., 7 Jur. (N. S.), 631.

Mackareth vs. R. R., L. R. 8, Exchequer, 149.

Watkins vs. Scottish Co., 23 Q. B. Div., 285.

In Z. Co. vs. Harris (Tex.), 35 S. W. Rep., 403, the business was carried on by soliciting agents.

"There is no sound reason why in the case of an insurance company doing business in another State by an agent under statutes such as those referred to in the principal cases it should not be deemed to be represented in the latter by such agent and held responsible for its obligations and liabilities therein incurred."

Talbot vs. F. & C. Co., 13 L. R. A., 586, note.

Where agents of the company received and forwarded applications to the company who issued policies and sent them to the agent, that was doing business in the State.

Berry vs. Knights, 46 F. R., 439.

Eq. L. A. Society vs. Winning, 58 F. R., 541.

M. B. I. Ins Co. vs. Robinson, 54 F. R., 581

Knights vs Berry, 50 F. R., 511.

Where an insurance company took notes in a State it was held to be doing business therein.

Hardeny vs. Leary, 12 Oregon, 44.

In Bloom vs. Richards, 2 Ohio St., 399, Judge Thurman said, after reviewing numerous authorities: "It thus seems to be the common expression of the courts that the making of a contract is business within the meaning of the acts."

See numerous cases cited as to "doing business" in note to 14 L. R. A., 530, 531, 532.

In Connecticut Life Ins. Co. vs. Spratly, 172 U. S., 602, it was held that an insurance company was still doing business in Tennessee, though it had withdrawn and was taking no new risks, but merely collecting premiums on old policies.

Receiving payments on stock loans made before the prohibitory act is carrying on business.

Ed. L. & I. Assn. vs. Peed, 52 N. E. Rep., 201.

If we were to concede that the contracts in question were valid in the State of New York, the situs of the Eastern Building and Loan Association, it would make no difference. The question is whether such contract can be enforced in Tennessee. It is against the policy of the Tennessee laws, and is void thereunder.

Now, it is elementary law that a foreign corporation has no right per se to demand that courts of States foreign to it shall enforce its contracts. The right to have such contracts enforced in such courts springs from and is entirely dependent upon the doctrine of the comity of the States. Such comity will not be applied in favor of the foreign corporation, where the contract sought to be enforced is against the policy of the State, and where it is forbidden by the law of such State.

The authorities show that where the contracts sought to be enforced were made in the State of the creation of the corporation and were valid under these laws, and were valid under the laws where they were to be performed, but were invalid by the lex fori, that they could not be enforced within the latter jurisdiction.

Seamans vs. Temple Co., 105 Mich., 400 (28 L. R. A., 430).
People, Etc., Society vs. Lester, 105 Mich., 716.
Cowan vs. London Ins. Co., 73 Miss., 321.
Rose vs. Kimberly, 89 Wis., 544 (27 L. R. A., 556).
Warsserboehr vs. Boulier, 84 Maine, 163.
Grover, Etc. Co. vs. Ratcliffe, 137 U. S., 299.
Cooper Mfg. Co. vs. Ferguson, 113 U. S., 733.

Seamans vs. Temple Co., 105 Mich., 400, was a suit by a corporation which had failed to comply with the law of Michigan in obtaining license to do business in that State upon a note given by one of its members for a premium upon insurance. The Court said in its decision: "If it be conceded that the contract was made in Wisconsin, and that the premiums and losses, if any, are payable there, it is as much in contravention of the policy of this State as though it had been made and was to be performed here. It cannot be supposed that the statutes cited were intended merely to prevent the act of making the

contract in this State. * * * Argument of counsel is substantially this: 'We have made our contract through the mail, and we have committed no violation of the Michigan statute, because we have done nothing upon Michigan soil. We have evaded your law and obtained a contract which you have sought to prohibit, and now we ask you to enforce it, for we are under the doctrine of State comity.'

"Under such circumstances the courts of the State are not open to the offending company, and the rule of State comity cannot be evoked in its behalf."

The above case was referred to approvingly in Holder vs. Aultman, 169 U. S., 91, 92.

In Cowan vs. London Ins. Co., 73 Miss., 321, the suit was brought by a foreign corporation against a citizen of Mississippi to recover premiums due on a policy of insurance on property situated in Mississippi. The contract of insurance was made in New York. The corporation had not complied with the laws of Mississippi relating to foreign corporations. The Mississippi Court said:

"We have held, and we think correctly, that a contract made in New York by a citizen of this State with a foreign insurance company, which has not complied with our laws, insuring property in this State, is a violation by such company of our statute, and hence that our courts are closed against such companies, seeking to enforce any right springing out of or resting on the contract; that the insurance company is in such a case taking a risk to transact business in this State."

In Rose vs. Kimberly, 89 Wis., 544 (27 L. R. A., 556), it was held that a contract made by mail for insurance of property within the State by a foreign company which is prohibited from transacting business within the State, would not be enforced. The Court (27 L. R. A., 557), said:

"The object of this statute is so plain that it cannot be mistaken. It is to protect our citizens against irresponsible and worthless foreign corporations of the very kind which we have now before us. The evil to be corrected is not the writing of a policy by an unlicensed company within this State alone, but the writing of such a policy at all. Bearing in mind the object of the statute and the evil to be corrected, it is very plain that the object will be largely defeated, and the evil will flourish as before, if it be held that companies without license can establish their agencies just outside of the State line and conduct their business by mail. * * * The writing of a policy of insurance upon property situated within this State would seem pretty clearly to be in some degree at least the transaction of insurance business in this State, whether the policy be written just within or just without the State line. It was said

in Stanhilber vs. Mutual M. Ins. Co., 76 Wis., 285, on page 291: 'A contract insuring property in this State necessarily involves the doing of business in this State, and herein subject to the laws of this State.' "

In Cooper M. Co. vs. Ferguson, 113 U. S., 733, the Court said:

"It must be conceded that if the contract on which the suit was brought was made in violation of the law of the State, it cannot be enforced in any court sitting in the State, charged with the interpretation and enforcement of its laws."

In Grover, Etc. M. Co. vs. Ratcliff, 137 U. S., 299, the Court said:

"The courts of Maryland were not bound to hold this judgment as obligatory, either on the ground of comity or of duty, thereby permitting the law of another State to override their own."

In a note to Gist vs. W. U. T. Co., 55 American State Reports, 774, the annotator, after stating that a ocntract valid where made is generally valid everywhere, says:

"But this rule is subject to the exception that no nation or State is bound to recognize or enforce contracts made elsewhere, which are injurious to its own citizens or subjects. The enforcement by one nation or State of contracts made under the laws of another, rests on principles of comity which cannot be so far extended as to violate the public policy or positive legislation of the former," referring to—

Gallamo vs. Pierce, 18 La., Ann, 10.
Smith vs. Godfrey, 28 N. H., 379.
Thirston vs. Rosenfield, 42 Mo., 474.
McLean vs. Hardy, 3 Jones Eq., 294.
Swan vs. Swan, 21 Fed. Rep., 299.

The same annotater continues:

"The only general rule that can be laid down is that contracts and liabilities recognized as valid by the laws of the State where made or established may be enforced in the courts of another State where the action is brought, unless contrary to morals, public policy or to positive law of the latter, in which event they will generally not be enforced," referring to numerous authorities.

Seaman vs. Temple Co., 28 L. R. A., 432, also says the right of a foreign corporation to recover does not exist where the contract is "expressly prohibited by law,' or it "is one which is clearly at variance with the settled policy of the State."

To same effect is

Lewis vs. Woodfolk, 2 Baxter (Tenn.), 48, 49.

The rule is also recognized in Bank of Augusta vs. Earle,

13 Peters, 589, where the court quotes approvingly from Story's Conflict of Laws, saying:

"In the silence of any positive rule affirming or denying or restraining the operation of foreign laws, courts of justice presume the tacit adoption of them by their own government, unless they are repugnant to its policy or prejudicial to its interests. It is not the comity of the courts, but the comity of the nation, which is administered and ascertained in the same way, and guided by the same reasoning by which all other principles of municipal law are ascertained and guided."

Mr. Morawitz says: "It is not necessary in all cases that a State should by statute expressly exclude foreign corporations in order to indicate that they shall not be allowed to act within its jurisdiction; the will of the State may be implied from its general policy and legislation," referring to numerous authorities.

Section 965, 2d Morawitz on Private Corporations.

Mr. Story says: "And every independent community will and ought to judge for itself how far that comity ought to extend."

Sec. 244, Story, Conflict of Laws.

Now, it would seem from all of the foregoing that whether the contract in question between Bedford and the Eastern Building and Loan Association was technically made in Tennessee or made in New York, that the question whether it can be enforced in Tennessee is to be governed by Tennessee law. Under Tennessee law the contract is absolutely void, and in any event it was against the public policy of the State, as declared in its laws as to foreign corporations, and in the decisions of the courts construing such laws.

WHAT IS THE TENNESSEE LAW?

Let us now see what is the law of Tennessee, as proclaimed in the decisions of its courts construing the very statutes in question and similar statutes.

In Hale vs. Henderson, 4 Hump., 200 (Tenn.), decided in 1843, the Supreme Court of Tennessee said:

"No principle of law is better settled than that no action will lie to enforce a contract made in violation of a statute or of the common law, or which is immoral in its character, or against public policy."

In Ins. Co. vs. Ins. Co., 11 Hump., 11, decided in 1850, the Supreme Court of Tennessee said:

"Now, as to contracts which contravene the provisions of a statute, the objection of illegality is equally fatal, whether the prohibitions of the statute be expressed or implied, as when a statute does not in express terms prohibit a thing to be done, but only imposes a penalty on the person doing it;

any contract which contravenes this implied prohibition will be held illegal. * * * Whether the contract be *malum prohibitum or malum in se* seems not to be material, as in either case the courts will refuse to enforce it, and upon this reasoning, that there can be no civil right where there can be no legal remedy, and there can be no legal remedy for that which is itself illegal."

In Talmadge vs. N. A. C. and Tr. Co., 3 Head, 338 (decided in 1859), it was held that foreign corporations could only exercise rights in Tennessee by comity. The court, speaking of this comity, said: "If prejudicial to ourselves or our citizens, of which we must be the exclusive judges, we are under our obligation to give it effect."

In Perkins vs. Watkins, 2 Baxter, 187, decided in 1872, the Supreme Court of Tennessee said:

"When contracts are prohibited by statute the prohibition is sometimes expressed and at others implied. Whenever the law imposes a penalty for making a contract it impliedly forbids parties from making such a contract, and when a contract is prohibited, whether expressly or by implication, it is illegal and cannot be enforced; of this there is no doubt."

Haworth vs. Montgomery, 91 Tennessee, 16, decided November 17, 1891, construed a Tennessee statute of 1889, providing persons could not practice medicine without first procuring certain certificates. There was a penalty prescribed for practicing without a license. It was held that a physician who had not procured the necessary certificate could not recover for services. The Court said:

"Where a statute has for its manifest purpose the promotion of some object of public policy, and prohibits the carrying on of a profession, occupation, trade or business, except in compliance with the statute, a contract made in violation of such statute cannot be enforced."

This case further held that a compliance with the State statute made after the rendition of the services was unavailing, notwithstanding an act passed in 1891 extended the time of taking out the necessary certificates.

A subsequent compliance with the terms of a statute did not validate the previous contract.

Neuchatel Asphalt Co. vs. Mayor, etc., 9 Miss. (N. Y.), 376.

Blevins vs. Fairley, 71 Mo. App., 263

Knoxville Nursery Co. vs. Commonwealth (Ky.), 55 S. W. Rep., 691.

In 1888 the Supreme Court of Tennessee decided the case of Stevenson vs. Ewing, 87 Tenn., 46. That case construed an act of the Legislature of 1885 declaring the occupation of a

real estate broker "shall be deemed a privilege and not pursued or done without a license." The Court (87 Tenn., 47) said:

"Here is an express prohibition of all unlicensed persons to act as real estate brokers and consequently a prohibition by necessary inference of all contracts which such persons shall make for compensation to themselves for so acting." The Court (87 Tenn., 48) said:

"It is familiar law, both in England and America, that a contract prohibited either expressly or impliedly by statute is illegal and cannot be enforced." The rule is also laid down in this case (87 Tenn., 50) that where a statute has "in view in whole or in part the protection of the public from fraud in contracts or the promotion of some object of public policy * * * the inference is that the statute was intended to prohibit contracts."

These decisions of the Supreme Court of Tennessee plainly informed foreign corporations how the laws passed in 1891 by the Legislature of Tennessee would be construed, and since the passage of the statutes now under consideration the Tennessee courts have repeatedly held contracts void where the foreign corporation had not complied with such laws.

The certificate from the Circuit Court of Appeals herein (Record, p. 132) says: "The Supreme Court of Tennessee has decided that notes and a mortgage executed under similar circumstances and made payable in Minnesota are Minnesota contracts, but that they are nevertheless void in Tennessee and cannot be enforced in the courts of Tennessee."

U. S. Sav. and Loan Co. vs. Miller, 47 S. W., 17.

In Hamilton vs. Fowler, 99 F. R., 21, the Court said as to the Tennessee acts in question: "It is well established by the Tennessee decision that every contract made in the State by a foreign corporation doing business within the State, not having complied with the law is unenforceable as between the parties thereto," referring to the authorities. The Court adds: "These cases are in accord with a line of earlier decisions of the State, holding that every contract made in the conduct of a business which is prohibited and made unlawful is, by implication, void and unenforceable."

This case (Hamilton vs. Fowler) held the statutes did not cover the case of an innocent purchaser of a note taken in the illegal business, overlooking the late case of Bank vs. Coughram, 52 S. W., 112 (Tenn.) deciding to the contrary.

In Myers Mfg. Co. vs. Wetzel, 35 S.W. Rep., 896, the Supreme Court of Tennessee decided that the acts of the Legislature of Tennessee, Chapters 2, 95 and 122, were all in force and were all applicable to foreign building and loan associations. Under

Chapters 95 and 122 of said acts the Eastern Building and Loan Association was bound to file it charter with the Secretary of State of the State of Tennessee, and to cause an abstract of the same to be registered in the different counties where it carried on business. It never filed any such charter or registered any such abstracts thereof, until August, 1893.

Record, p. 91.

Under Chapter 2 of the Acts of 1891, the Eastern Building and Loan Association was obliged to deposit securities with the State Treasurer of Tennessee and to file a copy of its charter with him. None of the provisions of this act were ever complied with by said association.

Record, p. 91.

In Lumber Co. vs. Thomas, 92 Tennessee, 595, the Supreme Court of Tennessee passed upon Act, Chapter 122 of Acts of 1891, and held that the foreign corporation not having filed its charter with the State Treasurer, that all contracts were void.

In State vs. Phoenix Ins. Co., 92 Tenn., 432, the Court said as to Chapter 122 of Acts of 1891, that "the chief purpose of the act was not to confer new privileges, but to impose restrictions upon foreign corporations."

Contracts were held void where the acts in question had not been complied with by the foreign corporation in the following cases:

Myers Mfg. Co. vs. Wetzel, 35 S. W. Rep., 896.
Cumberland Co. vs. Canter, 35 S. W. Rep., 888.
N. H. Ins. Co. vs. Kennedy, 36 S. W. Rep., 710 (96 Tenn., 711).

The case of N. Y. N. B. & L. Association vs. Cannon, 41 S. W. Rep., 1055 (99 Tenn., 344), is directly in point. It was said therein by the Court:

"It is argued that Cannon having become a stockholder in the association before the acts were passed, with a view to becoming a borrower, and for that purpose, and having made his application for a loan likewise before the acts passed, acquired a vested right to the consummation of the loan, and the association became legally obligated to complete it, and it was also unfinished business which the association had a right and which it was its duty to finish, notwithstanding the acts of the Legislature. If we were to grant that the borrower had a vested right to the loan, and the association had a legal obligation to consummate it, still it must follow that the contract could be entered into and the loan and mortgage made only in compliance with the law. There was nothing to prevent the association from complying with the statutes, and thus placing itself in the attitude where it could legally make the loan and take the mortgage if it were under obligations to do so, as it

claims. We think it cannot be considered that the association and Cannon were winding up an old transaction and unfinished business, but the association, as found by the Court of Chancery Appeals, was entering into a new contract, and through a local board doing business in the sense prohibited by the statute, with full knowledge of it and in defiance of its prohibition. Under the findings of facts the Court of Chancery Appeals was correct in holding that the contract was illegal and could not be enforced, and in refusing to foreclose the mortgage of the building and loan association."

Lumber Co. vs. Thomas, 92 Tenn., 589.

Mfg Co. vs. Gorten, 93 Tenn., 597.

In the above case all the applications, including the one for loan, were addressed to the foreign corporation and passed through the hands of their Tennessee agents, and the notes and obligations were payable at the home office of the foreign corporation. The application for loan was made before the acts were passed. In the present case Bedford's application for loan must be considered as made May 5, 1891, or after the acts were passed.

It has often been held that where a contract was lawful when made, and afterward the law rendered performance unlawful, that the contract was at an end.

Odlin vs. Ins. Co., 2 Wash. C. C., 312.

Rogers vs. Hoyt, 4 Vt., 172.

Fitzgerald vs. Grand Trunk R. R., 13 L. R. A., 70 (Vt).

Bradford vs. Jenkins, 41 Miss., 336.

Previous to the application for a loan Bedford had no contract by which he could force a loan.

In Illinois Building & Loan Association vs. Walker, 42 S. W. Rep., 192, the charter of the foreign corporation provided: "Each shareholder may receive a loan of $100 for each and every share held by him when there is sufficient money in the treasury to supply the demand for loans. Such loans to be made on approved bids in the discretion of the Board of Directors." The loan was applied for after the passage of the acts of 1891, which were not complied with by the foreign corporation. The Chancery Court of Appeals of Tennessee held (42 S. W. Rep., 193):

"The provision in the charter above quoted gave to the stockholder only the privilege of applying for a loan to the amount therein stated, if he should see proper to do so. That provision did not obligate the company absolutely to loan the money, but was expressly conditioned upon the fact of there being a sufficient amount of money in the treasury, and also upon proper application being made, accompanied with proper security, with the right of the company to pass upon these

matters." The court held the application was but "the beginning of the negotiation for that purpose." The court said: "By becoming a stockholder the defendant, B. F. Walker, had merely acquired a status that would enable him to open negotiations for a loan. There was no contract between him and the company at that time which could be in any wise impaired by subsequent regulations prescribed by the Legislature for the conduct of the company's business. We are, therefore, of the opinion that the complainant can base no right against the statutes upon the stocg above referred to or by reason of the fact that Walker had become a stockholder."

The above decision was affirmed by the Supreme Court of Tennessee.

42 S. W. Rep., 192, 195.

The case of the U. S. Savings & Loan Co. vs. Miller, 47 S. W. Rep., 17, is also directly in point and on all fours with the case at bar. It was a decision by the Chancery Court of Appeals of Tennessee, which was affirmed by the Supreme Court of Tennessee, and is referred to in the certificate of the Circuit Court of Appeals herein. In this case the agents of the foreign building and loan company in Tennessee were mere soliciting agents, who forwarded applications that were acted upon at the home office of the foreign corporation. The notes were payable at the home office of the corporation, and the court held that the contract was concluded at such home office, but still held that the foreign corporation was doing business in Tennessee, and had not complied with the Tennessee laws, and that the contracts were void. The contracts expressly stipulated that they were made with reference to the law of Minnesota, but the court held that the law of Tennessee could not be avoided or evaded in this way.

47 S. W. Rep., 21, 22.

A note executed in Tennessee is void, even in the hands of an innocent purchaser, when given as part of a business transaction with an Ohio corporation that had not complied with the Tennessee prohibitory laws.

First National Bank of Massillon vs. Coughran, 52 S. W. Rep., 1112 (Tenn).

Before he applied for a loan Bedford had a mere privilege of applying therefor. Having no contract or vested right to a loan, the State of Tennessee had the power to impose limitations upon loans made after the passage of the acts of 1891, or to prevent them. Mere possibilities or expectancies that loans would be applied for could not prevent the operations of these acts.

Clark vs. McCreary, 12 S. & M. (Miss.), 347.
Price vs. Sessions, 3 How. (U. S.), 635.

Allen vs. Hawks, 136 U. S., 301.
Randall vs. Kruger, 23 Wall., 148.
Stephens vs. Cherokee Nation, 174 U. S., 478.
Taylor vs. Taylor, 12 Lea (Tenn), 496.

Right to bar a contingent remainder may be defeated by statute.

People's L. & E. Bank vs. Garlington, 32 S. E. Rep. (S. C.), 513.

In Hamilton Gas Light Co. vs. Hamilton, 146 U. S., 268, the court says: "Nor does every statute which affects the value of a contract impair its obligation. It is one of the contingencies to which parties look now in making a large class of contracts, that they may be affected in many ways by State and National legislation."

A State law "may be retrospective in its character and may divert vested rights and yet not violate the constitution of the United States, unless it also impairs the obligation of a contract."

Charles River Bridge vs. Warren Bridge, 11 Peters, 539.
Satterlee vs. Mathewson, 2 Peters, 413.

SECOND QUESTION.

The second question propounded by the Circuit Court of Appeals (Record, p. 133) is:

"Was the validity of the mortgage executed and delivered under the same circumstances to be determined by the validity of the note to which it was incident, or by the law of the State where the land lay which the mortgage conveyed, and which, upon default, must be sold to pay the notes?"

Of course, if the notes were invalid, the mortgage was, and therefore what has been said as to the first question applies equally to the second question. If it should be conceded, however, that the notes were valid, still the mortgage is invalid. The mortgage was executed in Tennessee, conveys Tennessee land, and necessarily has to be enforced in Tennessee. If the contract evidenced by the notes be valid, it is upon the theory that they are New York contracts, either because they are payable in New York, or because the notes were accepted by the association in New York. Any liability on the notes is based on the idea that they are beyond the jurisdiction of the State of Tennessee, and cannot be affected by its laws.

Now, the land which is embraced in the mortgage is situated in Tennessee and cannot be withdrawn therefrom, either actually or theoretically. The validity of all conveyances of said land is necessarily tested by the laws of the State of Tennessee. This is true whether the mortgagor executes the mort-

gage in Tennessee or outside of it. The validity of a contract as to land must be determined by the law of the place where the lands are situated.

Brine vs. Ins. Co., 96 U. S., 635, 636.

McGoon vs. Scales, 9 Wall, 27.

In Suydam vs. Williamson, 24 How., 433, the court said:

"The subject of the dispute is real property situated within the State of New York, and her laws exclusively govern."

In Clark vs. Clark, —— U. S., page ——, decided by the Supreme Court of the United States May 21, 1900, it was held that the equitable conversion of real property into personalty by will was a matter within the exclusive province of the State in which the land lies to determine, although the will was made elsewhere.

In Thompson vs. Kyle, decided December 21, 1897, by the Supreme Court of Florida, and reported in No. 1, Vol. 23, Southern Reporter, pages 15 and 16, the court said:

"It is almost universally held that so far as real estate is concerned, we must look to the laws of the State where it is situated for the rules which govern its descent, alienation and transfer, and for the construction, validity and effect of conveyance thereof," referring to many authorities.

See same case, 39 Fla., 582.

In that case parties living in Alabama executed a mortgage therein to secure payment of a debt contracted and payable therein. The mortgage was upon lands in Florida. One of the mortgagors was a married woman, and the mortgage was invalid under Alabama law, but it was held valid under the Florida law.

In Walling vs. C. & G. Grocery Co. (Fla.), 47 L. R. A., 608, it was held that though a woman had been made a free dealer by decree of court of another State, her status in Florida, with respect to enforcement of liabilities against her property therein situated was not changed.

The validity of the mortgage or conveyance necessarily depends upon the State law. The conveyance cannot be void in the State court and valid in the Federal court. Section 3 of the act, chapter 122 of acts of 1891 of Tennessee, expressly provides "that it shall be unlawful for any foreign corporation to do or attempt to do any business or to acquire any property in this State without first having complied with the provisions of this act."

In the face of this act and the other acts of the Tennessee Legislature, and of the repeated decisions of the Supreme Court of Tennessee holding mortgages void, how can the mortgage be held legal? A party taking a mortgage on Tennessee land is necessarily bound by Tennessee law as to it.

Mr. Wharton says that all interests in land "that may fall under the term lien in its most general sense are controlled by the lex rei sitae. * * * The only way by which title can be made to such liens, or the only process by which such liens can be enforced, is that of the situs."

Sec. 291 Wharton on Conflict of Laws.
Secs. 296, 276a, 275, 390a, 293 1b.
Story Confl. Laws, secs. 446, 447, 424, 364.

"So if the laws of a State prohibit the making of a mortgage to secure future advances or liabilities, a mortgage in this form of land in that State would not be recognized there, although made in a State where such a mortgage would be valid."

Sec. 662, 1st Jones on Mortgages (4th Ed).
Goddard vs. Sawyer, 9 Allen (Mass.), 78.
See also Hosford vs. Nichols, 1 Paige Ch. R., 226.

The United States Court followed the Louisiana law as to the necessity of reinscribing mortgages.

Bondurant vs. Watson, 103 U. S., 288.

The power of a State over property situated therein is so absolute that mere personal property can be classed as immovable.

McCollum vs. Smith, Meigs (Tenn.), 341.
Jones vs. Marble, 6 Hump. (Tenn.), 116.
Green vs. Van Buskirk, 7 Wall., 139.

Where an act made the lien of a judgment depend upon registration of a copy in the county where the debtor resided, it was held this applied to judgments of the Federal Courts.

Reed vs. House, 2 Hump. (Tenn.), 581.

The act, chapter 122, of 1891 of Tennessee, in section 3, provides "that it shall be unlawful for any foreign corporation to do or attempt to do any business, or to own or to acquire any property in this State, without having first complied with the provisions of this act."

Taking a mortgage was acquiring property, in the sense of this act. It has been held that a deed of trust is an interest or estate in land, and not a mere incident to the debt.

Ormsby vs. Oltman, 85 F. R., 495.

The principle was further recognized in Cutter vs. Davenport, 1 Pick. (Mass.), 86, where it was held that an administrator could not transfer a mortgage. The court said: "The assignment of a mortgage is in one view merely an assignment of the debt with the collateral security for the payment of it. But after a foreclosure the land becomes the principal thing, and the debt is extinguished to the extent of the value of the land. It must therefore be anticipated in the making and the assignment of a mortgage that the land may eventually be

held as an absolute estate by virtue of these conveyances, and that they must be such as would be sufficient to convey the land if the conveyance was absolute and without condition."

The case of McIlwaine vs. Isely, 96 F. R., 68, 69, is directly in point. In that case a suit was brought in the Circuit Court of the United States in North Carolina to foreclose a mortgage. The court held that the contract secured by the mortgage was a Tennessee contract, but that in the enforcement of the mortgage the law of North Carolina, as defined in the decisions of her courts, had to be followed. The court therefore held that in the foreclosure proceedings the debt had to be treated as usurious, though it would not have been so independently of the mortgage.

See also Maroney vs. Association, 116 N. C., 891 (47 Am. St. Rep., 841).

If the notes in the present case can be enforced it is upon the theory that the State law can be disregarded in favor of the non-resident corporation. But how can the State law as to the validity of the mortgage on land situated therein be disregarded? The State, having the right to exclude the foreign corporation and to prevent its acquiring property or interests therein within its borders, can such corporation take as an incident what it could not take directly? Is the title to this mortgage to be considered bad in the State court, but good in the Federal court? The land could not actually or theoretically be carried out of the State, and the State law must determine the title thereto. The fact that a mortgage is incident to a debt cannot change this principle. The legal capacity to make or take a mortgage of land, and the legal capacity to make or take other contracts, are determined by different rules.

Mr. Wharton, in his work on Conflict of Laws, sec. 292, speaks of the pledge or mortgage of land being "merely collateral to a personal contract of loan." All the cases referred to by him, however, involved simply questions of usury, and the principal contract was valid. So far as usury is concerned, parties in many cases may, in good faith, make contracts payable in foreign States, and contract to pay interest according to the laws of such States. No one, however, can disregard the laws of his State as to the conveyance of land situated therein.

Mr. Wharton shows the situs of a debt and the situs of a mortgage securing it are entirely different.

Sec. 368 Wharton on Conflict of Laws.

In Hamilton vs. Fowler, 99 F. R., 21, the court refers to various authorities, holding that a mortgage is incident to the debt. In all of the cases referred to the parties had the legal

capacity to execute the contract, as well as the mortgage securing it. Of course, in such cases the mortgage may be regarded as an incident merely. But where there is a want of legal capacity to execute or take the mortgage, it cannot be regarded as a mere incident.

THIRD QUESTION.

The third question submitted by the Circuit Court of Appeals (Record, p. 133) is:

"May a State, by its laws forbidding the transaction of business within its borders, annul the contracts of its citizens, entered into and to be performed without the State, when those contracts are but the consummation of the inhibited business within the State, without an infraction of the fourteenth amendment to the Constitution of the United States?"

We do not understand the United States Circuit Court of Appeals in this question to intimate that the contracts in question were technically "entered into" in New York. The Circuit Court of Appeals has not said so in the statement of facts made by it, and we insist, as we have hereinbefore done, that the contracts were made and closed in Tennessee.

We also in this connection again insist that even if the contracts were technically closed in New York, that they were made in the course of and as a part of a general business admittedly carried on by the Eastern Building & Loan Association in Tennessee, which business was forbidden by Tennessee law. This illegal business cannot be made practically legal by having all the contracts made therein closed outside of the State of Tennessee. To so hold seems to us to sanction a plain evasion of the Tennessee laws. By such a decision all laws attempting to control foreign corporations are practically destroyed.

It is plain that Bedford had no fixed or vested right to a loan by virtue of the fact that he held stock in the Eastern Building & Loan Association. He could only get a loan if the association chose to give it to him. Any loan was dependent not only upon the condition of the association, but upon its willingness to loan him. The association could not force him to borrow, and when the State law forbade the business Bedford could not assist the association in breaking that law.

Hooper vs. California, 155 U. S., 656.

The Supreme Court of Tennessee has decided that there is no vested right to a loan, merely because a party holds stock, and the cases are identical with the cases at bar.

Ill. B. & L. Association vs. Walker, 42 S. W., 192.

N. Y. N. B. & L. Association vs. Cannon, 41 S. W. Rep., 1055.

99 Tenn., 344.

In Connecticut, etc., Ins. Co. vs. Spratly, 172 U. S., 602, it was held that the State having the right to impose such terms upon the foreign corporation desiring to do business therein as it saw fit, that the State could alter, withdraw or add to these terms thereafter. The court said:

"In all such cases there can be no contract springing from a compliance with the terms of the act and no irrepealable law," etc.

The fact that the Eastern Building & Loan Association had sold stock to Bedford before the passage of the acts of 1891 did not give the association any right, after the passage of the laws of 1891, to loan to Bedford, or him any right to demand a loan of such association.

The Fourteenth Amendment of the Constitution of the United States certainly was not designed to aid foreign corporations to evade State laws.

Can such corporations make a fraudulent use of such constitutional amendment, so as to enable them to do indirectly what they admittedly cannot do directly?

Can such corporations come right up to the State line, send its agents across such line, solicit and bring about business in the State foreign to its domicile, and when all the contracts in such forbidden business are about to be closed by the citizens of such State, have them closed ouside of the State and thereby avoid the State law?

In 11th Vesey, 628, the Court said:

"Upon the statute of frauds, though declaring that interest shall not be bound except by writing, the cases in this Court are perfectly familiar deciding that a fraudulent use shall not be made of that statute."

In Plumley vs. Massachusetts, 155 U. S., 479, it is said: "The Constitution does not secure to anyone the privilege of defrauding the public."

In Hooper vs. California, 155 U. S., 658, the Court shows that the States having the right to exclude foreign corporations, that the laws in respect thereto, should be so construed as not to allow the contracting parties to avoid their effects. The Court, arguing against a construction contended for, says:

"It would be only necessary for such a corporation to have an understanding with a resident that in the effecting of contracts between itself and other residents of the State, he should be considered the agent of the insured persons, and not of the company. This would make the exercise of a substantial and valuable power depend not on the actual facts of the transactions over which it lawfully seeks to extend its control, but upon the disposition of a corporation to resort to a mere subterfuge in order to evade obligations properly imposed upon it.

Public policy forbids a construction of the law which leads to such a result, unless logically unavoidable."

In this same case, the Court (155 U. S., 656) says, speaking with reference to the right of the State to exclude foreign corporations or to impose terms on them that such State "has also the further right to prohibit a citizen from contracting within her jurisdiction with any foreign company, which has not acquired the privilege of engaging in business therein either in his own behalf or through an agent empowered to that end." Now, the State having this power, of course, has the power to prohibit its citizens and the foreign corporation within its limits from attempting to bring about the forbidden business of the foreign corporation. The agencies established by the foreign corporations in Tennessee and the efforts of these agents preliminary to the closing of contracts in such business were all illegal, as the corporation had not complied with the Tennessee law. Everything done up to the very closing of the contracts (if we assume that such contracts were technically closed outside of Tennessee) was illegal.

How can contracts based on, founded upon and growing out of these illegal acts, become legal simply because they are made just across the State line?

In Waters-Pierce Oil Co. vs. Texas, 177 U. S., 28, Hooper vs. California is referred to approvingly.

Every country will judge for itself how far it will "adopt and how far reject any such acts or contracts" in evasion or derogation of its laws.

Sec. 106 Story Conflict on Laws.

Gardner vs. Lewis, 7 Gill (Md.), 392, 404.

The case before the Court is not an isolated transaction. It is a part of a general business carried on in Tennessee, and the Court is asked by the corporation to say it could carry on such business in Tennessee and invite citizens of that State to go out of the State physically or theoretically so they and the corporation could evade the State law. Is not this a plain attempt to make a "fraudulent use" of the Fourteenth Amendment?

In the opinion referred to the Court say (155 U. S., 658):

"The Fourteenth Amendment, however, does not guarantee the citizen the right to make within his State either directly or indirectly a contract, the making whereof is constitutionally forbidden by the State.'

In the case before the Court Bedford never left the State of Tennessee. Every paper he signed was executed within Tennessee. Could he be heard to say, when he had always been within the jurisdiction of Tennessee and subject to its laws, that he had the right, under the Fourteenth Amendment, to

have papers sent outside of Tennessee, to be accepted outside of Tennessee, and that he, therefore, in such contracts, was not subject to Tennessee laws? When Bedford remained always in Tennessee, could not that State forbid him to evade its laws and forbid him to assist the foreign corporation in carrying on its illegal business in Tennessee? We submit it clearly could. If Bedford were insisting that the contracts were valid, he would have no standing in court. Now, of course, the Eastern Building and Loan Association, in dealing with Bedford and the other parties it did business with, knew their actions were illegal, as it was bound to know the law. Can the Fourteenth Amendment protect a business or a contract thus procured under such circumstances? We submit not. If the State of Tennessee had the right to forbid Bedford, its own citizen, to make the contracts the association could acquire no rights. Bedford was under a legal disability just as much so as if he had been a lunatic, or a feme covert, or otherwise been unable to make a contract. We submit, therefore, that if the contracts were consummated outside of Tennessee theoretically, that still they were illegal.

In Dugger vs. Ins. Co., 95 Tenn, 247, the Supreme Court of Tennessee held an Act making void all stipulations in insurance policies limiting liability to less than the full amount of loss, not exceeding the amount of insurance, did not violate the Fourteenth Amendment.

> See also Eq. L. Ins. Society vs. Clements, 140 U. S., 226.
>
> N. Y L. Ins. Co. vs. Russell, 77 F. R., 103, 104.
> Pearce vs. People, 106 Ill., 22.

The Philadelphia Fire Ins. Co. had been doing business legally in New York from 1872. In 1865 the Legislature of New York passed a law providing that whenever laws of any other State should require New York corporations doing business there to pay greater license fees than the laws of New York required of foreign corporations doing business in that State, that then New York would require a similar license fee of foreign corporations doing business in that State. In 1873 the State of Pennsylvania passed a law imposing a tax of 3 per cent. yearly on premiums received by foreign insurance companies in Pennsylvania. In 1882 the insurance officer of New York required the Philadelphia Fire Association to pay as a license fee a tax of 3 per cent. on premiums received by it in New York in 1881. The Philadelphia Fire Association claimed "that being in the State (New York) by permission of the State continuously from 1872 to 1882, the State imposed on it while there in 1882 an unequal and unlawful burden; and that the

New York Act of 1865 did not come into effect as to Pennsylvania corporations until the Pennsylvania Act of 1873 was passed, at which time the defendant had already been a year in the State."

The Court held that the tax was legal, and that it did not violate the provisions of the Fourteenth Amendment of the United States Constitution, providing that no State shall, "deny to any person within its jurisdiction the equal protection of the laws." The Court (119 U. S., p. 119) said: "The State having the power to exclude entirely, has the power to change the conditions of admission at any time for the future and to impose as a condition the payment of a new tax or a further tax as a license fee. If it imposes such license fee as a prerequisite for the future, the foreign corporation, until it pays such license fee, is not admitted within the State or within its jurisdiction. It is outside at the threshold seeking admission with consent not yet given."

Phila. Fire. Asso. vs. New York, 119 U. S., 110
Manchester F. Ins. Co. vs. Herriott, 91 F. R., 711.

Now, if fresh terms can be imposed on a foreign corporation, where it is doing business legally in a State and it be thus legally run out of the State without violating the Fourteenth Amendment, it would seem that amendment was not violated by preventing the foreign corporation evading the laws the State had the right to make.

To same effect is Norfolk &c. R. R. vs. Penn., 136 U. S., 114. In this case the Court (page 118) refers to Pembena Mining Co. vs. Pennsylvania, 125 U. S., 181, saying, "in that case we held, following Paul vs. Virginia, 8 Wall, 168, that corporations are not citizens within the meaning of Clause I., Section 2, of Article IV. of the Constitution of the United States, declaring that 'the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.' And we also hold that Section 1 of the Fourteenth Amendment to the Constitution, declaring that no State shall 'deny to any person within its jurisdiction the equal protection of its laws,' does not prohibit a State from imposing such conditions upon foreign corporations as it may choose as a condition of their admission within its limits. See also Philadelphia Fire Ass'n. vs. New York, 119 U. S., 110."

See also Home Ins. Co. vs. N. Y., 134 U. S., 594.

In Paul vs. Virginia, the Court said as to foreign corporations:

"The recognition of its existence, even by other States, and the enforcement of its contracts made therein depend purely upon the comity of these States—a comity which is never extended where the existence of the corporation or the exercise

of its powers are prejudicial to their interests or repugnant to their policy. Having no absolute right of recognition in other States, but depending for such recognition, and the enforcement of its contracts upon their assent, it follows, as a matter of course, that such assent may be granted upon such terms and conditions as those States may think proper to impose. They may exclude the foreign corporations entirely; they may restrict its business to particular localities, or they may exact such security for the performance of its contracts with their citizens as in their judgment will best promote the public interest. The whole matter rests in their discretion."

Paul vs. Va., 8 Wall., 181.

In this case the Court shows in the clearest manner that foreign corporations have no rights outside of their own State, except such as are voluntarily allowed them. The Court (p. 182) shows that the exercise of this right of exclusion and discrimination is of the highest importance, saying:

"It might be of the highest public interest that the number of corporations in the State should be limited; that they should be required to give publicity to their transactions; to submit their affairs to proper examination; to be subject to forfeiture of their corporate rights in case of mismanagement, and that their officers should be held to a strict accountability for the manner in which the business of the corporations is managed, and be liable to summary removal."

8 Wall., 182.

In Ducat vs. Chicago, 10 Wall., 415, the Court says:

"As to the nature or degree of discrimination, it belongs to the State to determine, subject only to such limitations on her sovereignty as may be found in the fundamental law of the Union."

The Fourteenth Amendment of the Constitution does not impair the police power of a State.

Barbiere vs. Connolly, 113 U. S., 27.

Statutes like the one in question, passed by the Legislature of the State of Tennessee are an exercise of the police power of a State to protect its citizens.

Eagle Ins. Co. vs. Ohio, 153 U. S., 446.

Missouri P. R. R. Co. vs. Humes, 115 U. S., 512.

In Patterson vs. Kentucky, 97 U. S., 505, the Court said: "We have frequently decided that the police powers of the State were not surrendered when the Constitution conferred upon Congress the general power to regulate commerce with foreign nations and between the several States."

In Am. U. T. Co. vs. W. U. T. Co., 67 Ala., 23, it is said: "These regulations by a State of foreign corporations are police regulations; just as much a police regulation for the pro-

tection of the property interests of the citizens of the State as a law forbidding vagrancy among its inhabitants."

See also Dudley vs. Collier, 87 Ala., 431.

Certainly this police power to protect its own citizens is not lost by a State simply because the foreign corporations against whom protection is attempted evades the law by having contracts in its business closed outside of the State.

We submit that having no right to transact business in Tennessee in defiance of the State laws, that the Eastern Building and Loan Association cannot claim its "privileges or immunities" are abridged, or that it is denied "the equal protection of the laws" when the contracts taken by it in an illegal business are refused to be enforced. The attempt to enforce the contracts in question is based on a manifest evasion of the law; no foreign corporation can have a constitutional right to evade the law.

A statute requiring full payment of a policy does not violate the Fourteenth Amendment.

Orient Ins. Co. vs Daggs, 172 U. S., 557.

Daggs vs. Ins. Co., 35 L. R. A., 228.

See also

Bank vs. Penn., 167 U. S., 461.

Before the Tennessee Acts in question were passed foreign building and loan associations could transact business in Tennessee without having to undergo any examination as to their financial condition and affairs. To prevent irresponsible corporations from invading Tennessee, the laws in question were passed, requiring them to exhibit their charters, make known their condition and deposit securities. Of course it was the business of and to the interest of such corporation to loan money in Tennessee and they were bound to comply with the State laws when they undertook to carry on business in Tennessee.

The right of a State to require deposit of securities is undoubted.

Lewis vs. A. S. and L. Assn. (Wis.), 39 L. R. A., 559.

Blake vs. McClung, 172 U. S., 257

The above case of Blake vs. McClung holds that a corporation is not a citizen within the meaning of the constitutional provision that the citizens of each State "shall be entitled to "all privileges and immunities of citizens in the several States," and that a foreign corporation cannot invoke such provision. While holding that such corporation was "a person" under the Fourteenth Amendment, it was held that such corporation was not deprived of property without due process of law by making the claim of the foreign corporation subordinate to the claims of Tennessee creditors.

FOURTH QUESTION.

The fourth question submitted (Record, p. 133) is:

"Even if a State may by law refuse enforcement of such a contract in its courts, should a Circuit Court of the United States sitting in the State refuse to enforce it when jurisdiction over the parties exists by reason of their diverse citizenship?"

The courts, of course, have nothing to do with the policy of the laws of Tennessee in question. Mr. Endlich, in his work on the Interpretation of Statutes, Section 5, says:

"So long as a legislative enactment violates no constitutional provision or principle, it must be deemed its own sufficient and conclusive evidence of the justice, propriety and policy of its passage."

See also Endlich, Sections 6, 7, 8.

In Amy vs. Watertown, 130 U. S., 319, it is said:

"With motives we have nothing to do. Certainly improper motives cannot be attributed to a State Legislature in the passage of any laws for the government of the State."

In Paul vs. Virginia, 8 Wall., 182, the wisdom of State laws attempting to regulate foreign corporations is commended.

The State of Tennessee had the right to pass the prohibitory laws as to foreign corporations.

It is perfectly well settled that any State has the right to exclude any foreign corporation from transacting business within its limits, and that any terms can be imposed on the foreign corporation seeking to do business within the State that the State sees fit to impose.

Bank vs. Earl, 13 Pet., 519.
Ins. Co. vs. French, 18 How., 404.
Paul vs. Virginia, 8 Wall., 168.
Ducat vs. Chicago, 10 Wall., 410.
Fritz vs. Palmer, 132 U. S., 282.
Young vs. S. T. I. Co., 85 Tenn., 197.
R. R. Co. vs. Harris, 12 Wall., 82.
State vs. Phoenix Ins. Co., 92 Tenn., 587.
Talbott vs. F. C. Co., 13 L. R. A., 584.
Allegeyer vs Louisiana, 165 U. S., 583.
Ashley vs. Ryan, 153 U. S., 445.
Horn Silver M. Co. vs. N. Y., 143 U. S., 314.
Hooper vs. California, 155 U. S., 652.

The Fourteenth Amendment of the Constitution of the United States does not abridge this right of the States to ex-

clude foreign corporations. The only limitation is where the business is strictly commerce, interstate or foreign.

Pembina Co. vs. Penn., 125 U. S., 181.

Horn Silver M. Co. vs. N. Y., 142 U. S., 314.

The fact that commerce is indirectly affected is immaterial.

People vs. Wemple, 131 N. Y., 65.

See also

Merchants Bank vs. Pa., 167 U. S. 463, 464.

This right of a State to exclude foreign corporations is so absolute that it can withdraw its license to the foreign corporation if it insists on its right of going into the Federal Court.

Doyle vs. Ins. Co., 94 U. S., 541.

The loaning of money by a foreign corporation is not a matter of interstate commerce, and it may be subjected to conditions by the State.

Nelms vs. Edinburgh Co., 92 Ala., 157.

So. B. & L. Co. vs. Norman (Ky.), 31 L. R. A. 41.

98 Ky., 294.

"Business done within the State cannot be made to mean business done between that State and other States."

Pacific Express Co. vs. Seibert, 142 U. S., 339, 350.

In Nathan vs. Louisiana, 8 How. (U. S.), 80, 81, it was held that a dealer in exchange was "not engaged in commerce, but in supplying an instrument of commerce," and that money it self was a mere instrument of commerce.

The fact that commerce may be indirectly affected is immaterial.

Brass vs. North Dakota 153 U. S., 391.

Hopkins vs. U. S., 171, U. S. 591, 592.

The State of Tennessee having the right to pass the prohibitory laws, as to foreign corporations doing business in her limits, the United States Courts are bound by the State construction of those statutes as made by the State Courts.

The construction of State statutes by State Courts is conclusive.

Watson vs. Lane, 10 L. R. A., 784.

Rhodes vs. Bank, 34 L. R. A., 742.

The case of the Bank of Augusta vs. Earle, 13 Peters, 589, shows that the comity enforced or denied "is not the comity of the courts, but the comity of the nation." The United States Courts can then only enforce the law or policy declared by the State of Tennessee and its authorities as to foreign corporations.

In Elmandorf vs. Taylor, 10 Wheat., 159, 160, Chief Justice Marshall shows United States Courts are bound by State decisions construing State statutes, just as State Courts are bound by United States decisions as to United States laws,

unless such decisions "come in conflict with the Constitution, laws or treaties of the United States."

United States Courts wait for State decisions as to State statutes so as to conform to them.

Davie vs. Briggs, 97 U. S., 637.
Pelton vs. Bank, 11 Otto, 143-148.

United States Courts change their decisions so as to follow State decisions as to State Statutes.

Green vs. Neal, 6 Pet., 295.
Leffingwell vs. Warren, 2 Black 603.
Christy vs. Pidgeon, 4 Wall., 196.
Fairfield vs. Gallatin, 100 D. S., 52.

The duty of United States Courts as to such matters is "to yield rather than encroach."

Fullerton vs. Bank, 1 Pet., 614.

In the following cases the decisions of the Court, made after the trial in the lower court, or after suit began, was followed:

U. S. vs. Morrison, 4 Pet., 136.
Seibert vs. M. & A., of Pittsburg, 1 Wall., 272.
R. R. Tax Cases, 92 U. S., 617.
Forsyth vs. Hammond, 166 U. S., 506.
Bauserman vs. Blount, 147 U. S., 647.
Moores vs. Bank, 104 U. S., 625.
Miller vs. Ammon, 145 U. S., 421.
Flash vs. Conn., 109 U. S., 371.
Norton vs. Shelby Co., 118 U. S., 425.

See also

Union Bank, of Chicago, vs. Kansas City Bank, 136 U. S., 223.

In Adams Ex. Co. vs. Ohio, 165 U. S., 195, the decisions of the State of Ohio were followed and property of corporations engaged in interstate commerce was valued as a unit for taxation.

It has been held in New York that the construction by State courts of State statutes was controlling, though the decision was made after the contract in question and after suit brought.

Jesup vs. Carnegie, 80 N. Y., 441.

In Burber vs. R. R., 125 U. S., 555, the Supreme Court, against its own convictions, followed Massachusetts decisions as to effect of trading on Sunday.

The Court reversed a previous ruling involving land and followed the last State decision, saying:

"The subject of this dispute is real property lying within the State of New York and her laws exclusively govern."

Snydam vs. Williamson, 24 How., 427, 433.

It is said in Flash vs. Conn., 109 U. S., 378, as to State decisions: "It is true this decision was made after the defendant

had become a stockholder in the Pensacola Lumber Co., but there had been no previous contrary decision. As said by this Court in Burgess vs. Seligman, 107 U. S., 20, even in such cases for the sake of harmony and to avoid confusion the Federal Courts will lean toward an agreement of views with the State Courts if the question seems to them balanced with doubt."

The Court further said in that case (109 U. S., 378):

"We think this is a case where the construction of the State Court is entitled to great, if not conclusive weight with us. It is the settled construction of a law of the State upon which the rights and liabilities of a large number of its citizens must depend."

In R. R. Tax Cases, 92 U. S., 618, it is said there are "few exceptions" to the rule that State decisions will be followed.

To same effect:

Adams Ex. C. vs. Ohio, 165 U. S., 219.

In Forsyth vs. Hammond, 166 U. S., 520, the State decisions made after the trial in the lower court was followed, as it "was upon a question of local nature involving the internal policy of the State, and therefore such a decision as should be, generally speaking, recognized and followed by the Federal Courts." The Court declined to follow Burgess vs. Seligman, 107 U. S.

In Miller vs. Ammon, 145 U. S., 423, the contract involved was made before the decision of the State Court construing the statute, yet such decision was followed by the United States Court, which refused to follow Burgess vs. Seligman, 107 U. S., 20; Anderson vs. Santa Anna, 116 U. S., 556; Butz vs. Muscatine, 8 Wall., 575, and similar cases. In so deciding the Court (143 U. S., 423, 424) said the question was one of a "particularly local character" and that "there has been no change in the rulings of the Supreme Court on this question" by the State.

In Amy vs. Watertown, 130 U. S., 318, the Court says:

"In the construction of a State statute in a matter purely domestic (as this is) we always feel strongly disposed to give great weight to the decisions of the highest tribunal of the State."

In Elmwood vs. Marcy, 92 U. S., 294, it is said the State decisions will be followed, "except where they have been construed differently at different times."

In Nichols vs. Levy, 5 Wall., 444, the decision of the State Court was followed, the matter "being a local statute, and involving a rule of property," although the Court thought the decision was wrong.

Such State decisions are followed "unless they conflict with or impair the efficacy of the Federal Constitution or of a Fed-

eral statute or a rule of general commercial law."

Stutsman vs. Wallace, 142 U. S., 306.
Gormly vs. Clark, 134 U. S., 348.
Norton vs. Shelby County, 118 U. S., 439.

The Tennessee laws in question violate no Federal statutes. Hooper vs. California, 155 U. S., 648, which is approved in Allgeyer vs. Louisiana, 165 U. S., 578, shows such laws are not in conflict with the Federal Constitution. Such rules do not violate any rule of general commercial law.

So. B. & L. Asso. vs. Norman (Ky.), 31 L. R. A., 43.
98 Ky., 294.
172 U. S., 358, 359.

In M. K. & T. Co. vs. Krumseig it was held that where there is a State statute making void a contract for usury, the public policy of the State will be enforced in the United States Courts.

In N. Y., etc., vs. Roberts, 171 U. S., 661, it is said:

"It must be regarded as finally settled by frequent decisions of this Court that, subject to certain limitations, as respects interstate and foreign commerce, a State may impose such conditions upon permitting a foreign corporation to do business within its limits as it may judge expedient."

In Pacific Express vs. Seibert, 142 U. S., 350, the validity of the State statute was sustained, the Court saying, "business done within this State cannot be made to mean business done between that State and other States."

A decision by the Supreme Court of Pennsylvania that the Erie Railroad was doing business in that State in the sense of its act, was held conclusive.

Erie R. R. vs. Pennsylvania, 21 Wall., 492.

The statutes of Tennessee in question were in regard to local matters and concerned the rights of the State of Tennessee and "the rights and liabilities of a large number of its citizens." These statutes did not affect any foreign corporation that stayed at home, but only those that came to Tennessee and did business therein. If the construction that the Tennessee courts have given these statutes be not followed, and it be held that the mere form of the contracts by which the general business of the corporation is carried on, exempts the foreign corporation from Tennessee law, the result would be that Tennessee statutes are practically dead and that Tennessee cannot prevent an invasion of foreign corporations, no matter how worthless they may be. What foreign building and loan association will deposit $25,000 or $50,000 as security in Tennessee, when it can retain this money by simply varying the forms of contracts taken by it in its business carried on in Tennessee? The foreign corporation that violates and evades the Tennessee law would be better off than the one that obeyed it.

In 164 U. S., 155, it was said:

"If the act violates any provision expressed or properly implied of the Federal Constitution it is our duty to so declare it, but if it do not, there is no justification for the Federal Courts to run counter to the decisions of the highest State Court upon questions involving the construction of State statutes or constitutions on any alleged grounds that such decisions are in conflict with sound principles of general constitutional law."

Falbrook vs. Bradley, 164 U. S., 155.

See also

Osborne vs. Florida, 164 U. S., 650.

In Leeburger vs. McCormick, 175 U. S., 274, it was held that the decision of a State Court holding that by reason of their false assumption of corporate authority its officers, directors and shareholders of what purported to be a national bank, but which never obtained legal authority to do business, became liable as partners, on the principle of agency for contracts entered into in the name of the corporation, does not involve any Federal question.

Questions of public policy generally "are governed by the "law of the State as expressed in its own Constitution and statutes or declared by its highest court."

Hartford F. Ins. Co. vs. C., M. & St. P. R. R., 175 U. S. 91

While Tennessee is the sole judge of what laws shall exist in her territory, and of the construction that is to be given these laws, it may be observed that the construction her courts have put on the laws in question is in accordance with decisions of other States and with those of the Supreme Court of the United States. The decisions of the State of New York, the situs of the Eastern Building and Loan Association, are in accord with the Tennessee decisions.

In Pennington vs. Townsend, 7 Wendell, 276, the Court held, quoting a previous New York case:

"It is a fundamental rule that all contracts which have for their object anything repugnant to the general policy of the law or contrary to the provisions of a statute are void * * * In the same case Mr. Justice Woodworth says an agreement expressly prohibited by statute must necessarily be considered inoperative and void. It will not be seriously urged that the party is subject to the penalty only, and that the courts are bound to consider the contract legal and valid."

The Court held that although penalties were provided the contract was void and repudiated the attempted distinction between *malum prohibitum* and *malum in se*.

See also Neuchatel Asphalt Co. vs. Mayor, etc., 9 Misc. (N. Y.), 376, referring to numerous cases.

It was further held that the construction by State Courts of

State statutes was controlling, even though the decisions were made after the contract in question and after suit brought.

Jessup vs. Carnegie, 80 N. Y., 441.

See also N. H. D. B. Co. vs. P. S. Co., 25 Wend., 648, 24 L. R. A., 303—note as to "Retaliatory Statutes."

McCanna vs C. T. & S. Co., 74 F. R., 597.

Eberhardt vs. Robertson, 78 Mo. App., 404.

In Re. Comstock, 3 Sawyer, 218, construed an act of Oregon which was similar to the Tennessee acts. The case refers to various Massachusetts cases and to National M. & F. I. Co. vs. Piersal, 10 Allen (Mass.), 232.

C. M. H. A. Co. vs. Rosenthal, 55 Ill., 90.

Aetna Ins. Co. vs. Harvey, 11 Wis., 395.

The various acts construed in these cases were similar to the Tennessee acts, and the decisions were like the Tennessee decisions.

Addison on Contracts, Vol. 2, Sec. 1147, says:

"Everything in respect of which a penalty is imposed by statute must be taken to be a thing forbidden and a contract to do such thing is absolutely void to all intents and purposes whatsoever. * * * Where a contract is to do a thing which cannot be performed without a violation of the law, it is void, whether the parties knew the law or not."

Teal vs. Walker, 111 U. S., 242, says "that contract was contrary to the public policy of the State of Oregon, as expressed in the statute just cited, and was not binding on the mortgagor or his vendee, and although not expressly prohibited by law, yet like all contracts opposed to the public policy of the State, it cannot be enforced."

See also

U. S. Bank vs. Owens, 2 Peters, 527.

Endlich on Stat., Sec. 449 to 452.

In Gibbs vs. Consolidated Gas Co., 130 U. S., 396, the Court held:

"The law cannot recognize as valid any undertaking to do what fundamental doctrine or legal rule directly prohibits; nor can it give effect to any agreement, the making whereof was an act violating law." The Court further held:

"The distinction between *malum in se* and *malum prohibitum* has long since been exploded, and * * * and it is clear that contracts in direct violation of statutes expressly forbidding their execution cannot be enforced."

The Court adds: "We cannot assist the plaintiff to get payment for efforts to accomplish what the law declared should not be done."

In Miller vs. Ammon, 145 U. S., 421, it was decided that the price of liquor sold in violation of law could not be recovered.

The contract was held void, though the ordinance prohibited the sale with a penalty.

"Premium notes taken before compliance with statutes are absolutely void, or at least cannot be recovered upon by the corporation until compliance with the statute is had."

8 Am. and Eng. Ency. of Law, 1 Ed., 341, 342.

The following authorities are on all-fours with the case at bar, and leave no room for discussion. The statute of Alabama is in all respects the same as the Tennessee statute. Foreign corporations did business in Alabama, and when an effort was made to enforce those contracts the Court in every instance refused relief, simply because the statute had not been complied with.

Farrier vs. N. E. M. Co., 88 Ala., 275.

Mullens vs. N. F. S. & M. Co., Ala., 7 So. Rep., 201.

Christian vs. A. L. F. S. & M. Co., Ala., 7 So. Rep., 427.

All the above were suits in equity to foreclose mortgages, given to secure the payment of money loaned by the complainant to the defendant, Dundee M. T. & Ins. Co vs. Nixon, 10 So, Rep. 311, was an action at law on a note for loaned money; Dadley vs. Collier, 87 Ala. Rep., 431, was a suit by the agent of a foreign corporation to recover commissions for negotiating the loan, and in this case all of the questions are fully discussed.

Seamens vs. Temple, 105 Mich., 400.

Cowan vs. L. Asso. Co., 73 Miss., 321.

We call the attention of the Court especially to the above named Alabama decisions, for the reasons that the questions presented and decided are identical with those in this record. In the above cases the Court draws the marked distinction between an executed contract and one that is executory. And the opinions are invaluable in this—that in Sherwood vs. Alvis, 83 Ala., 115, the Court held that a contract with a foreign corporation which had not complied with the laws of Alabama, and *which had been fully executed* could not be set aside or rescinded at the suit of the other party; that he was estopped to plead the invalidity of the contract, as the Court would not assist either party to an illegal contract, but leave them where they had placed themselves.

Sherwood vs. Alvis, supra, is in full accord and harmony with Seymour vs. Goldmines, 153 U. S., 523, and with Fritz vs. Palmer, 132 U. S., 282, and other similar cases, and with C. R. & C. R. Co. vs. Evans, 66 Fed. 812. The Alabama authorities, supra, which we rely upon, all sustain Sherwood vs. Alvis, supra. See also Long vs. G. P. R. R. Co., 91 Ala., 519. The distinction as noted is that one is an *executed*, the other an *executory* CONTRACT. Judge Lurton in 66 Fed., 816, rec-

ognizes the distinction, and says: "In the case last cited the Court recognized the obvious distinction between a contract executed and one executory." And again on the same page he continues: "A very broad distinction exists between an executed and an executory agreement. The statute has declared no forfeiture."

Judge Lurton, in delivering this opinion, had under consideration Chapter 122 of Tennessee Acts of 1891, This is the point in all the cases—no forfeiture has been declared by the State, and until this is done, all executed contracts must stand. *The law is that an executed agreement is no longer a contract; the performance of the contract dissolves the contractual relations between the parties.*

The law is clear that there can be no recovery upon a contract made in violation of a statute, the violation of which is prohibited, whether by penalty or not. This is so, although the statute does not, in terms, pronounce the contract void.

Miller vs. Ammon, 145 U. S., 421.
Thompson on Corp., Vol. 6, Sec. 79.
Morawitz on Corp., Sec. 44.
Sandage vs. S. B. M. Co., 142 Ind., 148 (51 Am. St. Rep. 179 and note).
Woods vs. Armstrong, 54 Ala., 150 (25 Am. Rep. 672 and notes 674-76).
V. M. H. A. Co. vs. Rosenthal, 55 Ill., 85 (8 Am. Rep. 626).
Thorne vs. Traveling Ins. Co., 80 Pa., St. 5 (21 Am. Rep. 92).
Wheaton's Law of Contracts, Vol 1, Sec. 363.

The Act of Tennessee, Chapter 2 of 1891 Acts, provides no penalty and prohibits the business. All of the authorities agree that in such case the contract is absolutely null and void.

Thompson on Corporations, Vol. 6, Sec. 7950.

It cannot be contended that Bedford was estopped to defend herein. He did not know of the existence of the Tennessee laws in question when the contract was made or that the association had not complied with them (Record p. 93.), while the said association did know of them, and did not comply with them. (Record p. 92.) The fact that Bedford held stock in the association cannot estop him. As far back as in Bank of Augusta vs. Earle, 13 Peters, 586, 587, it was decided that "wherever a corporation makes a contract, it is the contract of the legal entity of the artificial being created by the charter, and not the contract of the individual members." If an estoppel could be claimed, it would amount to a total re-

peal of the Tennessee statutes, and in effect allow the corporation to loan all its funds in Tennessee, although the law forbid it.

The State can prohibit its citizens from contracting.

Hooper vs. California, 155 U. S., 648.

There is no estoppel to show the legal incapacity of the corporation.

Keen vs. Coleman, 39 Pa., St. 299.
Welland Canal vs. Hathaway, 8 Wend., 481, 484.
DeWitt vs. Hastings, 8 Jones & Spencer (N. Y.) 463,
Domichett vs. Stinson, 63 Mo., 277, 279.
Harriman vs. Southan, 16 Ind., 190.

Where the foreign corporation has not complied with the prohibitary law it is held "as to this State, or any transactions therein, is neither a corporation de jure nor de facto. It has never acquired the right to exist here," and there is no estoppel.

Sample vs. Bank, 5 Sawyer, 92, 93,
Empire Mills vs. Austin Grocery Co. (Tex.)
15 S. W. Rep. 505 (12 L. R. A., 369).

In Lamb vs. Lamb, 6 Biss., 424, the court held the prohibitory law applied as well to mutual companies as to others, as the same prohibition was needed against all.

In Re. Comstock, 3 Sawyer 227, holds there is no estoppel where the prohibitory law has not been complied with.

"A person who transacted business within the State with an unregistered foreign corporation is not estopped to plead its non-registration to avoid the contract, even though the corporation was induced to act on the strength of his contract, because the defense that the contract 'was against public policy is superior to the private right.'"

Wildwood Pavilion Co. vs. Hamilton, 22 Pa. Co. Ct. R. 68 (7 Pa. Dist., R. 747).
43 W. N. C., 303, cited in American Digest 1899, page 1050 (284 b).

"The non-enforcement of illegal contracts being a matter of "public interest, a party thereto cannot by stipulations, either "at the time of the execution of the contract or afterward, "waive his right to set up the defense of illegality in any ac- "tion thereon by the other party. The same rule of public "policy which forbids the execution of the contract forbids the "giving of a quasi validity thereto by the waiver of such de- "fense.

1014 15th Am. and Eng. E. of Law, 2d Ed.

"A party must first be in a position to assert a right before "he can maintain it by estoppel."

1015 Ib.

The case at bar is like McCormick vs. Market Bank, 165 U. S., 553, where the Court said: "The present case is not one of "irregularity of organization or of abuse of a legal power, but "of an attempt to exercise a power expressly prohibited by "statute." The Court said: "The lease is void—cannot be made good by estoppel."

The Eastern B. and L. Association had no authority to transact any business in Tennessee.

Where a contract is illegal "there can be no waiver. The "defense is allowed not for the sake of the defendant, but of "the law itself. The principle is indispensable to the purity "of its administration. It will not enforce what it has forbid- "den and denounced."

Coppell vs. Hall, 7 Wall., 558.
Oscanyan vs. Arms Co., 103 U. S., 268.
Embry vs. Jamison, 131 U. S., 349.

In First National Bank of Concord vs. Hawkins, 174 U. S., 371, the Court quotes from Central Transportation Co. vs. Pullman, 139 U. S., 54-60, as follows:

"When a corporation is acting within the general scope of "the powers conferred upon it by the Legislature the corpora- "tion as well as persons contracting with it may be estopped to "deny that it has complied with the legal formalities which "are prerequisite to its existence or to its action because such "prerequisites might in fact have been complied with. But "when the contract is beyond the powers conferred upon it by "existing laws neither the corporation nor the other party to "the contract can be estopped by assenting to it or by acting "upon it to show that it was prohibited by these laws."

The Court (174 U. S., 371) continues: "The principles there "asserted are directly applied in the case of California Nat. "Bank vs. Kennedy, 167 U. S., 367, where the question and the "answer were thus stated by Mr. Justice White: 'The transfer "of the stock in question to the bank being unauthorized by "law, does the fact that under same circumstances the bank "might have legally acquired stock in the corporation estop "the bank from setting up the illegality of the transaction? "Whatever divergence of opinion may arise from conflicting "adjudications in some of the State Courts in this Court, it is "settled in favor of the right of the corporation to plead its "own want of power—that is to say, to assert the nullity of an "act which is an *ultra vires* act.' The cases recognized as "sound doctrine that the powers of corporations are such only "as are conferred upon them by statute." In the above case the Court declined to follow the suggestion that the liability of a stockholder was statutory, not contractual, saying: "As "the ownership of the stock in most cases arises from the vol-

"untary act of the stockholder he must be regarded as having "agreed or contracted to be subject to the obligation."

See also

De La Vergne R. M. Co. vs. German Sav. Inst., 175 U. S., 59.

McMullen vs. Hoffman, 174 U. S., 670.

It will be remembered that the by-laws of the Eastern B. and L. Association only authorized it to do business in the States "where no legal prohibition exists." (See Art. 1, Sec. 3, Record, p. 55.) If such association had contracted to loan money to Bedford it could not have been forced to do so in the face of this prohibition and of the prohibitory laws of Tennessee.

In Wagerhauser vs. Minnesota, 176 U. S., 559, the Court held: "Whether a party in a case has been given or refused the "benefit of the law of estoppel involves no Federal question."

In the case of Sioux City T. R. & U. Co. vs. Trust Co., 173 U. S. 112, the Court declined to notice the question of estoppel, "since it rests upon an assumption that the Court of Iowa has "decided that the corporation was by estoppel prevented from "complaining of a void act. But the Supreme Court of Iowa "has not so decided."

Now, the decisions of the Supreme Court of Tennessee, holding contracts like the one in question herein void, are based on the illegality of the transactions, and not upon any question of estoppel.

THE LOAN WAS USURIOUS.

If the transactions in question were otherwise legal, the loan was usurious. In making the loan of $4,600 Bedford was required to pay a fixed premium of $460, and received only $4,140. Receiving a fixed premium for a loan of money is usury in Tennessee and in most of the States.

McCauley vs. Workingman's B. & L. Assn., 97 Tenn., 421.

35 L. R. A., 224 and note.

Post vs. Association, 97 Tenn., 408.

When Bedford was required (Record, p. 63) to withdraw his stock and receipt in full he could get no benefit from future profits of the association. The transaction was the borrowing of a fixed sum, to be repaid at a fixed time. In Hubbell's Legal Directory of 1897, page 482, it is said "the legal rate of in- "terest (in New York) is 6 per cent. All instruments (except "bottomry and respondentia bonds and contracts) and all de- "posits of goods, or other things whereupon or whereby a "greater rate is reserved, taken or secured, are absolutely void.

"even in the hands of innocent third parties."

The legal rate of interest in Tennessee is 6 per cent. per annum, "and any excess over that rate is usury."

Section 3493, Shannon's Code of Tennessee.

It is not usury where the agreement to pay above the legal rate depends upon a contingency.

Spain vs. Hamilton, 1 Wall., 604.

Patterson vs. B. & L. Assn., 14 Lea (Tenn.), 690, 694, 695.

McCauley vs. B. & L. Assn., 97 Tenn., 431, 433, 435.

Where, however, the party withdraws his stock and loses all interest in the profits of the association the loan is fixed and certain, and no element of contingency remains.

This doctrine is recognized in New York.

In Citizens' M. L. Assn. vs. Webster, 25 Barb., 268, the Court said: "These payments are to be made only until the termina- "tion of the said association. The duration of the association "is uncertain. It will continue till a fund has been accumu- "lated sufficient to pay to every holder of unredeemed shares, "the nominal or par value of the shares being the sum of "$800. Whether the payments required to be made by this "bond in order to prevent forfeiture will exceed the principal "and legal interest of the amount advanced to the defendant "will depend upon matters not brought before the Court, either "upon the pleadings or the proof. *If the principal was payable "absolutely there would be no doubt of the usury.*"

See also

B. & L. Co. vs. Fatty, 1 Abbott, N. Y. Ct. of Appeals, 350.

In Melville vs. Am. B. B. Association, 33 Barb. 113, 114, the Court said "Upon the making of said first mentioned mort- "gage, although still (as I understand the effect of the arti- "cles) nominally a member of the association his only rela- "tion thereto was that of a debtor. Upon no possible contin- "gency could he have any beneficial interest by reason of "these shares in the property of the association. And the "same may be said as to each of the other redemptions. Since "the making of the last mortgage the plaintiff had not had "(so far as appears) any interest in the concern."

The Court held that as the payments were to continue longer than sufficient to pay principal and interest that the transaction was usurious.

The transaction should be governed by Tennessee law. Section 9 of Chapter 31 of Acts of Tennessee of 1877, provides as to charters of foreign corporations doing business in Tennessee "all such parts thereof as may be found to be in conflict "with the laws of the State shall be null and void."

If the Eastern Building and Loan Association, by its charter or the laws of New York, was allowed to loan money upon fixed premiums, or to loan to members while excluding them from participation in profits, and was allowed to exclude all uncertainty and contingency by maturing the stock at a fixed time, yet it could not do this in carrying on business in Tennessee, as the Tennessee law did not allow this. The whole contract was permeated with usury, as 5 per cent. "premium," alias for interest, and 5 per cent. interest were charged in addition to the fixed premium of $460.

"A corporation has no implied authority to do any act in "a foreign State which is not permitted by the law of the "latter to individuals generally."

Par. 694, 695, 2d Morawitz on Private Corporations.
Clark vs. R. R., 50 F. R., 338,
Rhodes vs. M. I. & L. Co., 173 Ill., 621.
42 L. R. A., 93.

"That which a State may do with corporations of its own "creation it may do with foreign corporations admitted into "the State."

Orient Ins. Co. vs. Daggs, 172 U. S., 567.

"The spirit of comity does not require that a non-resident "shall be allowed a remedy which is by the policy of the law "denied to its own citizens."

Rube vs. Buck (Mo.), 25 L. R. A., 178.
Williams vs. Gold Hill M. Co., 96 F. R., 454.
Sokoloski vs. N. S. B. & L. Association, 26 So. Rep. (Miss.) 361.
Crofton vs. N. S. B. & L. Association, 26 So. Rep. (Miss.) 362,

Making the notes payable in New York was an attempted evasion of Tennessee law, as the business was being carried on in Tennessee.

U. S. Sav. & Loan Association vs. Scott (Ky.), 34 S. W. Rep., 236; 98 Ky., 695.
Martin vs. Johnson, 8 L. R. A., 170 (84 Ga., 481).
Banks vs. Flint, 10 L. R. A., 460 (54 Ark., 40).
Thompson vs. Edwards, 85 Ind., 414.
Andrews vs. Pond, 13 Peters, 78.

The Court's especial attention is called to the cases of Marony vs. Association, 116 N. C., 882 (47 Am. St., Rep. 841) and McIlwain vs. Iseley, 96 F. R., 68.

When it is remembered that the stock issued to Bedford matured at a fixed time, that he was to pay fixed sums and that he was forced to withdraw his stock and receipt in full, it is evident that the transaction was not in accordance with the principles applicable to building and loan associations

and that the transaction should be treated as a plain loan of money. When such is the case the party should be charged only with what he got and be credited with all payments made by him in full.

Wilber vs. Association, 45 Md., 547,
Kuppert vs. Gullenberg Association, 30 Pa. St., 465.
Hughes' Appeal, 30 Pa., 471.
Overly vs. F. B. & L. Association, 81 N. C., 56.
Hanner vs. G. B. & L. Association, 78 N. C., 188.
Price vs. Empire L. Association, 75 Mo. App., 551.

The bill herein (Record p. 5) treats Bedford's stock as canceled and wants a complete settlement. In such cases all payments should go as a credit on the debt, including payments on stock.

Randall vs. N. B. L. & P. Union, 29 L. R. A., 136 (42 Nebraska, 809).
Tilley vs. Am. B. & L. Association, 52 F. R., 618 (Ark.).

When Bedford got nothing but so much money, and is deprived of all benefits of the association, it is evident that the so-called "premium" is simply a cover for interest.

In 94 Ga., 562, the Court calls "premiums" mere "fancy "names, carefully eschewing the name of interest, which said "charges really are."

The Eastern B. & L. Association was carrying on business generally in Tennessee. If the notes had been payable in Tennessee they would clearly have been usurious. The association, carrying on business in Tennessee, cannot evade the usury laws of Tennessee by taking obligations payable elsewhere. The case is not like or governed by Pioneer Loan Co. vs. Cannon, 96 Tenn., 600. In that case the company was not doing business in Tennesee and the contracts were not made in Tennessee.

Respectfully submitted,
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ADDENDA.

COPY OF ACTS OF TENNESSEE.

CHAPTER XXXI.

'AN ACT to declare the terms on which Foreign Corporations organized for mining or manufacturing purposes may carry on their business, and purchase, hold and convey real and personal property in this State.

Section 1. Be it enacted by the General Assembly of the State of Tennessee, That corporations chartered or organized under the laws of other States or countries, for the purpose of mining ores or coals, or of quarrying stones or minerals, of transporting the same, or erecting, purchasing or carrying on works for the manufacture of metals, or of any articles made of or from metal, timber, cotton or wool, or of building dwelling houses for their workmen and others, or gasworks, or waterworks, or other appliances designed for the promotion of health, good order, or general utility, in connection with such mines, manufactories and dwelling houses, may become incorporated in this State, and may carry on in this State the business authorized by their respective charters, or the articles under which they are or may be organized and may enjoy the rights and to do the things therein specified, upon the terms and conditions, and in the manner and under the limitation herein declared.

Sec. 2. Be it further enacted, That each and every corporation created or organized under or by virtue of any government other than that of this State, of the character named in the first section of this act, desiring to carry on its business in the State, must first file in the office of the Secretary of State, a copy of its charter or aticles of association, certified in the manner directed by law for the authentication of the statutes of the State or country under whose laws such corporation is chartered or organized, and must cause an abstract of the same to be recorded in the office of the register of each county in which such corporation proposes to carry on its business or to acquire any lands.

Sec. 3. Be it further enacted, That such corporations shall be deemed and taken to be corporations of this State, and shall be subject to the jurisdictions of the courts of this State, and may sue and be sued therein in the mode and manner that is, or may be, by law directed in the case of corporations created or

organized under the laws of this State.

Sec. 4. Be it further enacted, That such corporations may purchase, acquire and hold real estate in fee or any other interest less than the fee, and personal property of every kind; as they may deem necessary or suitable for the carrying on of the business specified in their said charters or articles of association, filed as aforesaid with the Secretary of State, and may sell, lease and convey such real estate as natural persons may do. And the State of Tennessee does hereby release its right of escheat by virtue of the alien origin of such corporations or the alienage or non-residence of the shareholders of such corporation, or any of them.

Sec. 5. Be it further enacted, That the corporations, and the property of all corporations coming under the provisions of this act, shall be liable for all the debts, liabilities and engagements of the said corporations to be enforced in the manner provided by law, for the application of the property of natural persons to the payment of their debts, engagements and contracts. Nevertheless creditors who may be residents of this State shall have a priority in the distribution of assets, or subjection of the same, or any part thereof, to the payment of debts over all simple contract creditors, being residents of any other country or countries, and also over mortgage or judgment creditors, for all debts, engagements and contracts which were made or owing by the said corporations previous to the filing and registration of such valid mortgages, or the rendition of such valid judgments. But all such mortgages and judgments shall be valid, and shall constitute a prior lien on the property on which they are or may be charged as against all debts which may be incurred subsequently to the date of their registration or rendition. The said corporations shall be liable to taxation in all respects the same as natural persons resident in this State, and the property of its citizens is or may be liable to taxation; but to no higher taxation, nor to any other mode or valuation, for the purpose of taxation; and the said corporations shall be entitled to all such exemptions from taxation which are now or may be hereafter granted to citizens or corporations for the purpose of encouraging manufactures in this State or otherwise.

Sec. 6. Be it further enacted, That such of said corporations as shall engage in the mining of coals, iron ore or other minerals, and in the manufacture of iron and other metals, shall have the right to construct and maintain roads, bridges, canals, tramways, telegraph lines and railroads between their mines and their places of manufacture, and for purposes of inlet or outlet to or from any railroad now or hereafter to be constructed, or to any river or waterway at the point or place most con-

venient for its operation and its business, and for this purpose such a corporation may purchase or acquire the necessary rights of way by contract with the owner or owners of the said lands on which the right of way is desired.

Sec. 7. Be it further enacted, That all corporations coming under the provisions of this act, shall in good faith and truly, within one year after filing with the Secretary of State the certified copy of the charter or articles of association as hereinbefore provided, begin and proceed with the business described in the said charter or articles of association so filed, and shall in good faith continue the same under the powers of said corporation in this said charter or articles of association as in this act declared; it being a chief object of this act to secure the opening and development of the mineral resources of the State, and to facilitate the introduction of foreign capital, and upon the failure of any such corporation to commence in good faith to develop and work some portion of its property within this State within one year after filing its said charter or articles of association in the office of the Secretary of State, all rights and privileges conferred by this act shall lapse and become void and of no effect.

Sec. 8. Be it further enacted, That any corporation obtaining and having the privileges of this act, may establish towns, villages or settlements for the use and residence of its employes, and others, on any lands acquired by virtue of this act, and until the population is sufficiently large for the formation of municipal corporations in any of such towns or villages, may establish such regulations for the government thereof as shall not be inconsistent with the laws of this State; and it shall not be lawful for any person or persons (except for medical uses as evidenced by the written order of some duly certified medical practitioner), nor for any corporation, to distill, have make, sell, barter, or give away, any spirituous liquor or intoxicating drink of any kind, whether described as "bitters," or by any other name that may be used to disguise its real nature, or to evade the provisions of this act, upon any lands acquired by any corporation under this act, nor within a radius of five miles (except within the boundaries of an incorporated town), from any mine or quarry, or of any furnace, rolling mill, foundry, or factory of any kind, established or purchased by any corporation under this act, so long as such mine, quarry, furnace, rolling mill, foundry or factory is actually worked, or held for the purpose of being worked, or whilst under construction, and all the provisions and restrictions of chapter 112 of the Acts of the Legislature of Tennessee, 1871, passed 14th of December, 1871, are hereby declared applicable to all corporations organized under this

act; and all persons violating any of the provisions of this section of this act, shall be punished as declared in the said act of 1871,

Sec. 9. Be it further enacted, That if any such charter or articles of association, or any part thereof, filed as aforesaid in the office of the Secretary of State, should be in contravention or violation of the laws of this State, all such parts thereof as may be found to be in conflict with the laws of this State shall be null and void.

Sec. 10. Be it further enacted, That this law shall take effect from the date of its passage, the public welfare requiring it.

Passed March 19, 1877.

EDWIN T. TALLIAFERRO,
Speaker of the House of Representatives.

HUGH M. McADOO,
Speaker of the Senate.

Approved March 21, 1877.

JAMES D. PORTER,
Governor.

CHAPTER 95.

AN ACT to amend an Act entitled "An Act to declare the terms on which foreign corporations, organized for mining or manufacturing purposes, may carry on their business and purchase, hold and convey real and personal property," Chapter 31 of Acts of 1877, Sections 1992 to 2003 of Millikin & Vertres' compilation of the laws of Tennessee.

Section 1, Be it enacted by the General Assembly of the State of Tennessee, That Chapter 31 of the Acts of the General Assembly of Tennessee for the year 1877, being Sections 1992 to 2003 of Milliken & Vertrees' compilation of the laws of Tennessee, be so amended as to apply to corporations chartered under the laws of other States known as "Building and Loan Associations," "Bonds and Investment Companies," "Real Estate, Land, Labor and Immigration Companies," "Co-operative Associations or Companies," "Cotton Compress and Warehouse Associations or Companies," "Electric Light, Gas and Electric Power, Gas Power and Steam Power Companies," "Stock Yards," "Cold Storage and Packing Companies," "Water-Works" and "Wrecking and Salvage Companies."

Sec. 2. Be it further enacted, That this Act take effect from and after its passage, the public welfare requiring it.

Passed March 10, 1891.

W. C. DISMUKES,
Speaker of the Senate.
THOMAS R. MYERS,
Speaker of the House of Representatives.

Approved March 17, 1891.

JOHN P. BUCHANAN,
Governor.

CHAPTER 122.

AN ACT to amend Chapter 31 of the Acts of 1877, declaring the terms on which foreign corporations organized for mining or manufacturing purposes may carry on their business and purchase, hold and convey real and personal property in this State, so as to make the provisions of said Act apply to all foreign corporations that may desire to own property or to do business in this State.

Section 1, Be it enacted by the General Assembly of the State of Tennessee, That Chapter 31 of the Acts of 1877 be so amended and enlarged as that the provisions of said Act shall apply to all corporations chartered or organized under the laws of other States or counties for any purpose whatsoever which may desire to do any kind of business in this State.

Sec. 2, Be it further enacted, That each and every corporation created or organized under or by virtue of any government other than that of this State, for any purpose whatever, desiring to own property or carry on business in this State of any kind or character, shall first file in the office of the Secretary of State a copy of its charter and cause an abstract of same to be recorded in the office of the Register in each county in which such corporation desires or proposes to carry on its business or to acquire or own property, as now required by Section 2 of Chapter 31 of Acts of 1877.

Sec. 3. Be it further enacted, That it shall be unlawful for any foreign corporation to do or attempt to do any business or to own or to acquire any property in this State without having first complied with the provisions of this Act, and a violation of this statute shall subject the offender to a fine of not less than $100 nor more than $500, at the discretion of the jury trying the case.

Sec. 4. Be it further enacted, That when a corporation complies with the provisions of this Act it shall then be, to all intents and purposes, a domestic corporation, and may sue and be sued in the courts of this State, and subject to the juris-

diction of the courts of this State just as though it were created under the laws of this State.

Sec. 5. Be it further enacted, That when such corporation has no agent in this State upon whom process may be served by any person bringing suit against such corporation, then it may be proceeded against by an attachment to be levied upon any property owned by the corporation, and publication, as in other attachment cases. But for the plaintiff to obtain an attachment he, his agent or attorney, need only make oath of the justness of his claim, that the defendant is a corporation organized under this Act, and that it has no agent in the county where the property sought to be attached is situated upon whom process can be served.

Sec. 6. Be it further enacted, That said Chapter 31 of the Acts of 1877, except in so far as the same is amended, enlarged and extended by this Act, be and the same is declared to be in full force.

Sec. 7. Be it further enacted that this Act take effect from and after its passage, the public welfare requiring it.

Passed March 21, 1891.

THOMAS R. MYERS,
Speaker of the House of Representatives.
W. C. DISMUKES,
Speaker of the Senate.

Approved March 26, 1891.

JOHN P. BUCHANAN,
Governor.

CHAPTER 2.

AN ACT to regulate the business of Building and Loan Associations.

Section 1. Be it enacted by the General Assembly of the State of Tennessee, That every building and loan association heretofore or hereafter incorporated under the laws of this State, which loans its funds outside of the county in which it has its domicile, shall deposit and keep on deposit with the Treasurer of the State, or with a trust company legally incorporated and duly organized under the laws of this State, to be selected by the Board of Directors of such association, in trust for all its members and creditors, mortgages (or other securities), received by it in the usual course of its business, amounting to not less than twenty-five thousand ($25,000) dollars nor more than fifty thousand ($50,000) dollars, at the discretion of the State Treasurer. When such mortgages (or other securities) are deposited with the said trust company, such company shall certify to the Treasurer of the State that

the said securities have been and are deposited with it under this act, and the same shall not be surrendered to or returned to the said building and loan association without the authority or sanction of the said Treasurer of the State. Provided, that every such corporation heretofore organized, whose mortgages or other securities so deposited do not amount to twenty-five thousand ($25,000) dollars, shall, within six months from the passage of this act, deposit with the Treasurer of the State, or trust company, such additional securities as, with the securities so deposited, shall equal in value the sum of twenty-five thousand ($25,000) dollars; and every such corporation hereafter organized, before com- the president and treasurer of some responsible trust company, certifying that it has on deposit securities, not less than $25,000, taken in the regular course of business, as mentioned in this act, in trust for all the members and creditors of such building and loan association.

Third. File with the State Treasurer a duly authenticated copy of a resolution adopted by the board of directors of such association, stipulating and agreeing that if any legal process affecting such association be served on said State Treasurer, and a copy thereof be mailed, postage prepaid, by the party procuring the issuing of the same or his attorney to said association, addressed to its home office, then such service and mailing of such process shall have the same effect as personal service on said association of this State.

Fourth. Pay the State Treasurer twenty-five ($25) dollars as fees for filing the papers mentioned in this section.

Sec. 4. Be it further enacted, That when process against or affecting any foreign building and loan association is served on the State Treasurer, the same shall be by duplicate copies, one of which shall be filed in the office of said State Treasurer, and the other by him immediately mailed, postage prepaid, to the home office of said association. The word process in this act shall include any writ, summons, complaint, declaration or order whereby an action, suit or proceeding shall be commenced, or which shall be issued in or upon any action, suit or proceeding at law or in equity authorized by law in this State.

Sec. 5. Be it further enacted, That when by the laws of any other State, Territory or nation, any taxes, fines, penalties, licenses, fees, deposits of money, securities or other obligations or prohibitions are imposed on building and loan associations of this State doing business in such other State, Territory or nation, or upon their agents therein, so long as such laws continue in force, the same obligations or prohibitions of whatever kind shall be imposed upon all building and loan associations of such other State, Territory or nation, doing business in this State, and upon their agents here.

Sec. 6. Be it further enacted, That the name "Building and Loan Association," as used in this act, shall include all corporations, societies, or organizations, or associations doing a savings and loan investment business on the building society plan, viz.: Loaning its funds to its members, whether issuing certificates of stock which mature at a fixed time in advance or not.

Sec. 7. Be it further enacted, No officer, director or agent of any foreign building and loan association shall, in this State, solicit subscriptions to the stock of such association, or sell, or knowingly cause to be sold or issued, to a resident of this State any stock of an association while said association has not on deposit securities as required by section 3 of this act, or before said association has complied with all the provisions of this act. License to agents of such companies or associations shall be issued by the treasurer, annually, on the first of January, and said treasurer is authorized to collect from each agent for said license $2 fee. Any violation hereof shall be deemed a misdemeanor, and upon conviction shall be punished by a fine of not less than $10 or more than $50.

Sec. 8. Be it further enacted, No officer, director or agent of any building and loan association incorporated under the laws of this State shall sell, issue, or knowingly cause to be sold or issued to any person not a resident of the State, in which the home office of said association is located, any stock of said association, while said association does not have on deposit securities as required by section 1 of this act. Any violation hereof shall be deemed a misdemeanor, and, upon conviction, the offender shall be punished by a fine of not less than $100, nor more than $500, or by imprisonment not less than ten days or more than six months, or by both, such fine and imprisonment, in the discretion of the court.

Sec. 9. Be it further enacted, That on or before the first day of September in each year every building and loan association doing business in this State, and governed by this act, shall deposit with the Treasurer of the State a report of its affairs and operations for the year ending on the 30th day of June immediately preceding; such report shall be verified under oath by the president and secretary, or by three directors of the association, and shall contain answers to the following questions:

First. The date when the association was incorporated and par value of each share of stock.

Second. The number of shares sold during the year.

Third. The number of shares cancelled and withdrawn during the year.

Fourth. The number of shares in force at the end of the year.

Fifth. A statement of the receipts and disbursements of the loan fund during the year.

Sixth. A statement of the assets and liabilities at the end of the year.

Such association shall pay to the Treasurer of the State $50 on filing such report. If any such association shall wilfully fail to furnish to the Treasurer of the State any report required by this act, at the time so required, it shall, in the discretion of the State Treasurer, forfeit the sum of twenty-five ($25) dollars per day for every day such report shall be delayed or withheld, and the Treasurer of the State may maintain an action in his name of office to recover such penalty, and the same shall be paid into the Treasury of the State for the benefit of the State.

Sec. 10. Be it further enacted, That every association depositing securities with the Treasurer of the State, as provided for in this act, shall annually pay to said Treasurer of State a fee of fifty ($50) dollars.

Sec. 11. Be it further enacted, That it shall be the duty of the State Treasurer, once in each year, at such time as he may select, to examine the books and verify the statement of each association governed by this act, doing business under the laws of this State.

Sec. 12. Be it further enacted, That all of the officers of any building and loan association governed by this act, and doing business in this State, who handle any of the funds of such associations, shall give sufficient bonds for the faithful performance of their duties as the board of directors may require, and no such officer shall be deemed qualified to enter upon the duties of his office until his bond is approved by the board of directors, with whom such bonds shall be filed; provided that the State Treasurer may require of any association, at any time, such increase of said bond, or additional sureties thereto, or such increase of said insurance as he may deem necessary for the protection of the members. The penalty for a failure of any association to file and maintain the bonds or policy, as required by the provisions of this section, shall be a fine of one hundred ($100) dollars for each day such association transacts business after such bond has become due under the provisions of this act, said bond or policy shall be held in trust for the benefit and protection of the members of such association, shall, subject to the provisions of section 1 of this act, be surrendered upon request to the association depositing the same for the purpose of making such deposit. No securities required to be withdrawn by said association from the said Treasurer of the State, or trust company, shall be withdrawn except upon filing with the said Treasurer of the State, before the same are surrendered, an affidavit of the president

and secretary of the association, stating the reason for desiring to withdraw such securities and such securities shall not be used for any purpose other than that stated in said affidavit.

Sec. 3. Be it further enacted, That no building and loan association organized under the laws of any other State, Territory or foreign government shall do business in this State unless said association shall (deposit and continually thereafter) keep deposited in trust for all of its members and creditors, with some responsible trust company, or with some State officer of this or some other State of the United States, mortgages (or other securities) received by it in the usual course of its business, amounting to not less than twenty-five thousand ($25,000) dollars nor more than fifty thousand ($50,000) dollars, at the discretion of the State Treasurer. All of the personal obligations of its members taken in the ordinary course of business of such association and secured on first mortgage on real estate, all dividends and interest which may accrue on securities held in trust, as aforesaid, by the trust company or the State, as provided herein, and all dues or monthly payments which may become payable on stock pledged as securitty for loans, the mortgages for which are on deposit in accordance with the provisions of this act, may be collected and retained by the association depositing such securities or mortgages, so long as such association remains solvent, and faithfully performs all contracts with its members. Any securities on deposit, as provided herein, may from time to time be withdrawn, if others of equal value are substituted therefor. Every building and loan association organized under the laws of any State, Territory or foreign government shall, before commencing to do business in this State—

First. File with the Treasurer of this State a duly authenticated copy of its charter or articles of incorporation.

Second. File with the Treasurer of this State the certificate of the proper State officer of another State, or mencing to do business, shall deposit with the said Treasurer of the State, or trust company, in trust, as aforesaid, securities of the value of twenty-five thousand ($25,000) dollars. The securities mentioned in this proviso shall consist of bonds or Treasury notes of the United States, national or State bank stocks or bonds of this State, or any other State of the United States, or of any solvent city, county or town of this State, or of any State of the United States having legal authority to issue the same, or first mortgages on real estate, or other legal securities aggregating in value twenty-five thousand ($25,000) dollars, and such securities may be withdrawn from time to time when mortgage securities of corresponding value shall be deposited in lieu and place thereof as provided in this act, or when other securities of

like character and value are substituted thereof, and it shall be the duty of the Treasurer of the State to examine the affairs of the said association from time to time to ascertain whether said associations have deposited all their securities and otherwise complied with the requirements of this act.

Sec. 2. Be it further enacted, That all interest and dividends and premiums which may accrue on securities held by the Treasurer of the State, or such trust company as provided herein, and all dues or monthly payments which may become payable on stocks pledged as security for loans, the mortgages for which are so deposited in accordance with the provisions of this act, may be collected and retained by the association depositing such securities as mortgages, so long as such association remains solvent and faithfully performs all contracts with its members, and when any mortgage shall have been fully paid to said corporation, the same shall be surrendered by said Treasurer of the State or under his order, upon filing with him a certificate of the register of deeds of the county where the real estate is situated, to the effect that the satisfaction of such mortgage has been filed of record. Any mortgage upon which default in the payment due has been made shall be surrendered to or returned to the said building and loan association as aforesaid, for the purpose of collection or foreclosure. Bonds or stocks deposited with said Treasurer of the State, or trust company as aforesaid, shall, if deemed advisable by the association, be surrendered to the association depositing the same, for the purpose of being converted into cash and loaned on real estate. Securities needed for deposit in any other State, Territory ciation and shall be enforceable by any member whenever cause of action shall accrue thereon.

Sec. 13. Be it further enacted, That this act shall take effect and be in force after its passage, provided that any association heretofore incorporated under the laws of this State, and subject to section 1 of this act, not having at the time this act takes effect securities to the amount of twenty-five thousand ($25,000) dollars, may have until October 1, 1891, in which to make the deposit of said sum, as provided in section 1 of this act. All acts or parts of acts inconsistent herewith are hereby repealed.

Passed March 26, 1891.

W. C. DISMUKES,
Speaker of the Senate.
THOS. R. MYERS,
Speaker of the House of Representatives.

Approved March 28, 1891.

JOHN P. BUCHANAN,
Governor.

CHAPTER 226.

AN ACT to Subject Foreign Corporations to Suit in This State.

Section 1. Be it enacted by the General Assembly of the State of Tennessee, That any corporation claiming existence under the laws of any other State ,or of any country foreign to the United States found doing business in this State, shall be subject to suit here, to the same extent that corporations of this State are, by the laws thereof, liable to be sued so far as relates to any transaction had in whole or in part within this State, or any cause of action arising here, but not otherwise.

Sec. 2. Be it further enacted, That any corporation having any transaction with persons or having any transaction concerning any property situated in this State, through any agency whatever, acting for it within the State, shall be held to be doing business herewithin the meaning of this act.

Sec. 3. Be it further enacted, That process may be served upon any agent of said corporation found within the county where the suit is brought, no matter what character of agent such person may be; and in the absence of such an agent, it shall be sufficient to serve the process upon any person, if found within the county where the suit is brought, who represented the corporation at the time the transaction out of which the suit arises took place, or if the agency through which the transaction was had be itself a corporation, then upon any agent of that corporation upon whom process might have been served if it were the defendant. The officer serving the process shall state the facts, upon whom issued, etc., in his return, and service of process so made shall be as effectual as if a corporation of this State were sued, and the process has been served as required by law; but in order that defendant corporation may also have effectual notice, it shall be the duty of the clerk to immediately mail a copy of the process to the home office of the corporation by registered letter, the postage and fees for which shall be taxed as other costs. The clerk shall file with the papers in the cause a certificate of the fact of such mailing, and make a minute thereof upon the docket, and no judgment shall be taken in the case until thirty (30) days after the date of such mailing.

Sec. 4. Be it further enacted, That it shall be the duty of the plaintiff to lodge at the home office of the company, with any person found there, a written notice from him or his attorney, stating that such suit has been brought, accompanied by a copy of the process and the return of the officer thereon, of which fact affidavit shall be made by the person lodging the same, stating the facts and with whom the notice was lodged.

or else the plaintiff or his attorney shall make an affidavit that he has been prevented from serving such notice by circumstances which should reasonably excuse giving it, which circumstances the affidavit of the plaintiff or his attorney shall particularly state; and no judgment shall be taken until one or the other of these affidavits shall be filed and the court be satisfied that the notice has been given the defendant, or that the excuse for not doing so be sufficient.

Sec. 5. Be it further enacted, That this act shall take effect from and after its passage, the public welfare requiring it.

Passed March 28, 1887.

W. L. CLAPP,
Speaker of the House of Representatives.
Z. W. EWING,
Speaker of the Senate.

Approved March 29, 1887.

ROBT. L. TAYLOR,
Governor.

Supreme Court of the United States,

OCTOBER TERM, 1900.

H. L. Bedford and Lou M. Bedford,

vs.

The Eastern Building and Loan Associatin of Syracuse, N. Y.

NO. 153.

ADDITIONAL BRIEF

On Behalf of H. L. Bedford and Lou M. Bedford.

We desire herein to notice certain portions of the brief filed in behalf of the Appellee, the Eastern Building and Loan Association.

The claim made on pages 110-111 of said brief that the Act of Tenn. ch. 2 of 1891 "was repealed without "qualification or limitation" by the Act ch. 114 of 1895 is incorrect. We attach a copy of this Act ch. 114 of

1895 hereto, and invite a comparison of it with the Act ch. 2 of 1891, copied in appendix to previous brief. The Act ch. 114 of 1893 (referred to in Act ch. 114 of 1895) need not be considered as it merely authorized the Treasurer of the State of Tennessee to employ experts to make examinations of Building and Loan Associations which the Act ch. 2 of 1891, had required the State Treasurer to personally make. A comparison of the two Acts, ch. 2 of 1891 and ch. 114 of 1895, shows that the latter Act was to a great extent a mere reproduction and continuance of the former one. Each Act was prohibitory and contracts made under each would be illegal where the foreign corporations had not complied with the terms thereof.

Sec. 3 of ch. 2 of 1891 provides no foreign Building and Loan Association "shall do business in this state "unless" securities of from $25,000 to $50,000 were deposited and all such associations were required "before "commencing to do business in this state" to file (1) copy of charter with State Treasurer; (2) deposit securities with State Treasurer; (3) file with Treasurer resolution authorizing service of process on him; (4) pay Treasurer $25 fee for filing papers.

By section 8 of ch. 114 of 1895 the foreign Building and Loan Association was required "before doing "any business in this State" to "obtain a license from

"the State Treasurer" and to (1) file with Treasurer copy of charter, etc.; (2) file report of financial condition; (3) file instrument appointing Treasurer agent upon whom process could be served; (4) pay fees to Treasurer for license and for filing papers.

The Act ch. 114 of 1895 did not mention any specific deposit of securities as required by it, but section 13 thereof was a reproduction of section 5 of ch. 2 of 1891. Each of these sections made the same prohibitions against corporations of foreign states and required same deposits of securities by them that such foreign states made against Tennessee corporations. Section 7 of ch. 2 of 1891 and section 10 of ch. 114 of 1895 each forbid sales of stock where the terms of each act had not been complied with by the foreign corporations. Section 9 of ch. 2 of 1891 and section 3 of ch. 114 of 1895 each required reports as to the financial condition of the foreign corporations. Section 11 of ch. 2 of 1891 and section 11 of ch. 114 of 1895 each provide for examination of books, statements, etc., of foreign corporations. Sec. 12 of ch. 2 of 1891 and section 6 of ch. 114 of 1895 are as to bonds required and one section is to a great extent a reproduction of the other. The two acts are largely the same with slight modifications and additions, and each act contains to a great extent the same prohibitions.

Each act required copy of charter to be filed with State Treasurer and that such Treasurer should be appointed agent upon whom process could be served, before business could be done in Tennessee. None of the requirements in either act were ever complied with by appellee. About the only material distinction between the two acts is that ch. 114 of 1895 dispensed with the deposit of securities by the foreign Building and Loan Associations unless the states of their domicile required such deposits of securities by Tennessee corporations, in which event the state of Tennessee imposed such additional reciprocal requirements.

On July 1, 1882, the legislature of New York passed an act, being chapter 409. This act covered various classes of corporations, domestic and foreign, including building and loan associations. By section 224 of such act, all such corporations were required to "transfer and assign to the said superintendent (superintendent of the banking department of the State of New York) registered public stocks of the United States or of the State of New York, or of any incorporated city of this state, authorized by the legislature to the amount in value (and to be at all times so maintained by said corporation) of ten per centum on the paid up capital stock of said corporation, now or at any time hereafter, but not less in any case than $50,000, which stocks

must be registered in the name of the superintendent officially as held in trust under and in pursuance to this Act" as security for creditors of said corporations, etc.

This Act of New York (ch. 409 of 1882) continued in force until January 5th 1892, when another Act was passed in its place, being ch. 689. This Act (ch. 689) embraced foreign and domestic corporations, including building and mutual loan corporations, and section 14 thereof provides, "every such corporation hereafter proposing to engage in such business in this State, shall, before engaging in such business, transfer and assign to the superintendent registered public stocks or bonds of the United States or of this State, or of any city, county, town or village, or free school district in this State authorized by the legislature to be issued to the amount in value and to be at all times so maintained by the corporation, of ten per cent. on its paid up capital stock, but not less in any case than $100,000 in cities, the population of which exceeds 500,000 inhabitants." The Act required this transfer of securities to be in the sums of $100,000, $50,000, $30,000 or $20,000, the same being dependent upon the number of inhabitants in the particular city where the business was to be carried on. The Act provides, "such stocks must be registered in the name of the superintendent

officially in the trust," as security for creditors of such corporation.

Section 31 of this Act provides that no foreign corporation "shall transact business in this State without the written permission of the superintendent of banks and another certificate from him stating that such corporation has complied with all the provisions of this chapter applicable to it and with all the requirements of law, and that it is authorized to transact the business within this State specified therein and that such business may be safely intrusted to it."

Section 32 of same Act provides: "No foreign corporation, company or association to which this chapter is applicable, shall transact any business in this State until it has executed and filed with the Superintendent of Banks a written instrument appointing such superintendent its true and lawful attorney, upon whom all process in any action or proceeding by any resident of the State against it may be served with the same effect as if it existed in this State and had been lawfully served with process therein," etc.

It thus appears that the State of New York continually from 1882 prohibited Tennessee Building & Loan Associations from doing business in New York which had not deposited funds or securities in New York and otherwise complied with the terms of the

New York Acts. The Acts of Tennessee, ch. 22, 1891, section 5 and chapter 114 of 1895. Section 13 made the same reciprocal requirements as to New York Building & Loan Corporations in Tennessee. It is thus apparent that continually from the very start New York Building & Loan Corporations have been required to deposit securities in Tennessee before transacting business therein and to meet other requirements, and that in addition to this the Act ch. 2 of 1891, named specifically the amounts of securities required.

The case of New Chatel Asphalt Co. vs. Mayor, etc., 9 Misc. (N. Y. Reports) 376, was decided in 1894, and as to effect of New York prohibitory laws refers to Demorest vs. Flack, 128 N. Y., 217; Hall vs. Bishop, 3 Daly, 109; Bloom vs. Soberski, 8 Misc. Rep., 311; 59 N. Y. State Reports, 277; Laney vs. Granite State Prov. Ass'n., 8 Misc. Rep., 319; 28 N. Y. Supp., 560; Best vs. Bander, 29 How., 489.; DeWitt vs. Brisbane, 16 N. Y., 508; Griffith vs. Wells, 3 Dev., 226; Swords vs. Owen, 34 N. Y., Super. ct. 277. It is claimed on p 117 of appellee's brief that this case(9 Misc., 376) was overruled in 155 New York, 373, 376. That decision, however, was based on the peculiar language of the New York statutes under consideration providing that where foreign corporations had not procured the certificate required, actions could not be maintained

"until it shall have procured such certificate," the court holding that the statute only intended the remedy to be suspended until the certificate had been procured. It is evident that New York courts would construe statutes like the Tennessee statutes exactly as Tennessee courts have done. See p. 61 of former brief and cases referred to in 9 Misc., 376.

It is evident the contracts in question could not become validated unless the Tennessee legislature intended by ch. 114 of 1895 to validate them. That act shows there was no intention to validate previous contracts made in violation of previous statutes. Each act required a copy of the charter to be filed with the State Treasurer and that he should be appointed agent upon whom process could be served, before business could be done in Tennessee. The continuance of the same terms by the last act shows the legislature by substituting one act for the other did not intend to validate any previous illegal contracts. Besides sec. 14 of ch. 114 of 1895 provides that where the terms of the previous acts had been complied with by foreign corporations they should have a certain time to comply with the terms of the act of 1895. If the legislature had intended to validate contracts where foreign corporations had not complied with the acts of 1891, why give this time to corporations that had so complied within which to comply with act of 1895?

Expressio unius est exclusio alterius is a universal maxim in the construction of statutes. says the court in U. S. vs. Arredondo, 6 Peters 725.

All of the legislative acts must be looked to in determining what is the public policy of the state of Tennessee. In Tennessee as shown in the previous brief there are two sets of corporation laws: one is the general corporation law and the other the Building and Loan Association statutes. The Supreme Court of Tennessee expressly held both of these sets of laws were applicable to foreign Building and Loan Associations and that the terms of each set had to be complied with by them.

Myers Mfg. Co. vs. Wetzel, 35 S. W. Rep. 896.

U. S. Sav. & L. Co. vs. Miller, 47 S. W. Rep. 22-24.

In 1895 the general corporation law of Tennessee was amended by Act ch. 81. A copy of this act is attached hereto. Previous to this act the foreign corporations had been required to file its charter with the Secretary of State and to register abstracts of such charter in the various counties. This act (ch. 81) dispensed with the necessity as to the future of registering abstracts of charter in the different counties. This act however (Section 3) expressly says "that this act shall

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not affect any contracts or remedy heretofore made in foreign corporations not having complied with the existing laws on the subject."

Now why should a Building and Loan contract made in violation of the Building and Loan statute be affected by the repeal thereof when all the other contracts made in violation of the generel corporation law were not affected? How could a repeal of one statute validate contracts made in violation of both sets of statutes? Chapters 81 and 114 of 1895 were passed the same day (Apr. 27, 1895). It is incomprehensible that the legislature intended by ch. 81 not to validate previous illegal and intended by ch. 114 to validate them. The various acts are discussed in U. S. Sav. & L. Co. vs. Miller, 4 S. W. Rep. 22.

The statute ch. 114 of 1895 contains many of the provisions of the act ch. 2 of 1891:

"Where a statute repeals another yet contains in it a provision of the former statute identical in substance, it cannot be said that as to that provision there has been any repeal."

Andeny vs. Levy, 57 Miss. 59, citing many authorities including Steamship Co. vs. Joliffe, 2 Wall. 458, 459 where the court held the last statute a mere continuation of the first one, disregarded the express words

repeal and said "the legislature did not intend by the repealing clause of the act of 1864 to impair the right to fees which had arisen under the original act of 1861."

See also Bear Lake Co. vs. Garland, 164 U. S. 1.

"It seems indeed to be the general understanding that the re-enactment of an earlier statute is a continuance, not a repeal, of the latter, even though the latter act expressly repeals the earlier."

Endlich on Interpretation of Statutes, sec. 490;

Sutherland on Statutory Construction, secs. 242-151;

Smith vs. People, 47 N. Y. 331;

McLaughlin vs. Hoover, 1 Oregon 31;

Forbes vs. Board of Health, 27 Fla. 189.

The "re-enactment of a previous statute or a provision of it is construed not to be an implied repeal of the enactment but a continuation thereof so that all interests under the original statute remained unimpaired. An express repeal and a re-enactment of the same act has a similar effect except where an interval of time came between the two legislative operations."

23 A. & E. Ency. of Law 515, 516.

The law is regarded as continuous in such cases.

Mortimer vs. Chambers, 43 N. Y. State 365:

Ely vs. Holton, 15 N. Y. 595:

Matter of Estate of Prime, 136 N. Y. 347:

Where the law is altered by statute pending an action the law as it existed when the action was commenced must decide the rights of the parties unless the legislature by the language used show a clear intention to vary the mutual relation of the parties.

Hitchcock vs. Way, 6 Adolphus & Ellis 943.

We insist further that even if the statute ch. 2 of 1891 had been repealed unconditionally and no other act had been thereafter in existence, still a previously illegal contract would not thereby become legal. All statutes unless expressly provided otherwise are prospective. The statutes in question did not apply simply to remedies—the contracts were affected thereby. This distinction is recognized in section 164 Sutherland Statutory Construction.

Johnson vs. Meeker, 1 Wis. 436.

"In connection with this subject we may observe that an act declared illegal by statutes is not made good by a subsequent repeal of the statute if it was originally illegal. So the repeal of a prohibitory act does not give validity to acts which were invalid under the operation

of the prohibitory act repealed. Thus in New York the Revised Statutes declared that no person unauthorized by law who should practice physic or surgery for any fee or reward should be capable of bringing suit for such fees: in 1844 this was repealed. An action was brought by an unlicensed practioner in 1845 to recover compensation for services rendered in 1840 prior to the repealing act. It was held that the repeal of the previous prohibitory laws had no effect in cases which arose before the passage of that act."

Sedgwick on Stat. and Const. Law, 132 (1st ed.) 112 (2nd ed.)

Bailey vs. Mogg, 4 Denio 60;
Jacques vs. Withy, 1 H. Blackstone 65;
DeSell vs. Lewenthal, 57 Miss. 343;
Andeny vs. Levy, 57 Miss. 58;
Roby vs. West, 4 N. H. 285;
Bauber vs. Mansell, 47 Me. 58;
Hathaway vs. Moran, 44 Me. 67.

The above cases show sales void when made did not become good by repeal of the statute.

In Andeny vs. Levy, 57 Miss., 58, the distinction is shown between cases where the contract is illegal where it is legal, but a penalty is imposed.

Freight claimed by a vessel in a prohibited trade

could not be recovered though the government remitted the penalties.

Petrot Guano Co. vs. Jarnette., 25 Fed. Rep., 677.

"Where a contract is made in express violation of law, a repeal of the prohibitory Act does not impart validity to the contract."

Milne vs. Huber, 3 McLean, 216.
See also Bank vs. Merrick, 14 Mass., 322.
Mitchell vs. Doggett, 1 Fla., 371, quoting Stony Confl. Laws, 205.
Hannay vs. Eve., 3 Cransh. 242.

The cases of In Re Hall, 167 U. S., 38, and Ewell vs. Daggs, 108 U. S.. 143, referred to by appellee, have no application. Each were cases of absolute repeals not of a continuance or modification of a previous law. In Re Hall, 167 U. S., 38, merely decides that where a court got jurisdiction by a certain statute its repeal took it away, and the repealing statute expressly applied to pending suits. Ewell vs. Daggs, 108 U. S., 143, was a case as to usury. The Texas statute as to usury simply avoided interest where usury was charged the contract as to principal being good. The Court held that upon the unqualified repeal of the usury statute the interest as contracted for could be recovered. This principle

is a manifest exception to the general rule that a void contract does not become legal by repeal of a statute. Before such void contract becomes legal the legislature must expressly legalize it. The ground of the distinction is this: Interest and the rate thereof is purely a statutory right.

379-380 11 Am. & E. Ency. of Law.

As parties have the right to contract as to principal and also for its incident interest, the rate of which as to whether usurious or not, is entirely dependent upon statute. Some courts seem disposed to give effect to the contract as to the incident when the only obstacle thereto the statute is removed by repeal. The parties are considered as having contracted for interest and the rate thereof has been recognized by the repeal as proper. It is evident Ewell vs. Daggs would not have been decided as it was if the repealing statute had contained the same prohibitions as the repealed statute. It was a case of unqualified repeal. Ewell vs. Daggs, 108 U. S., 150, refers approvingly to Fletcher vs. Stone, 3 Pick, 250 and recognizes the doctrine that "Acts which are mala in Se * * * are generally regarded as absolutely void in the sense that no right or claim can be derived from them, and Acts which are mala prohibita * * * are void or voidable according to

the nature or effect of the Act prohibited. Fletcher vs. Stone, 3 Pick, 250."

Now Fletcher vs. Stone decides where the Act "concerns the public good" that the contract in violation thereof is void. The case shows the distinction between usury cases where the debtor can be protected by holding the contract voidable at his election and other cases where the contract is void because "the public good" requires it. The Tennessee statutes under discussion concern "the public good" more particularly than the private interest of any special defendant. It is the public policy of the State of Tennessee to exclude foreign corporations who have not complied with the State laws and the only way to exclude them is to hold contracts void made in an unauthorized business. The State certainly never meant for such corporations to be considered as acting legally in carrying on a forbidden business until some particular defendant questioned the validity of one out of many similar transactions. No one could waive the illegality. The distinction between the two classes of cases is shown clearly by the fact that usury must be plead, whereas it is not necessary to plead the prohibitory laws. In Lumber Co. vs. Thomas, 92 Tenn., 594, it is said "the courts will deny any relief upon any illegal contract or transaction whenever its illegality is made to appear, whether in

the pleadings or proof, and will repel the party guilty of the illegality from the court whenever the fact appears." The Tennessee cases hold the contracts in question are void. Even if they were merely voidable, however, the Act ch. 114 of 1895, continued the prohibitions of the previous statute, and as the terms of neither were complied with it cannot be claimed the contract became good.

TENNESSEE LAW.

Appellee's brief p. 107-108 claims the first decision of the Supreme Court of Tennessee construing the statutes in question, was rendered after the contracts had been entered into. This claim is incorrect. Among the statutes violated was ch. 95 of acts of 1891 passed March 10, 1891, before Bedford's application for loan. This act extended the act ch. 31 of 1877 to foreign Building and Loan corporations. The Supreme Court of Tennessee in 1886 passed on the act ch. 31 of 1877 saying, "we do not think that a foreign corporation * * are authorized to carry on business in this state except upon compliance with this act and upon the terms of this act."

Young vs. S. T. L. Co., 85 Tenn. 198.

In commenting on the case of U. S. Savings & Loan Co. vs. Miller, 47 S. W., 17, appellee's brief, p. 115, claims that it was decided therein that "there was

no legal delivery of the bond and mortgage until they reached Minnesota and were approved there." The court said (U. S. S. & L. Co. vs. Miller, 47 S. W., 24) "under the terms of the application for the loan, as shown by 'Hints to Borrowers,' printed on the back thereof, the loan could not become consummate until the final approval was granted by the company's general attorney upon the securities forwarded by the local treasurer and until this indication of that approval to the company's trustee, its paying officer, and this, although the draft had been delivered because its delivery was by the contract subject to the known condition. But in any event it was clear that the draft was not deliverable until May 2, 1895, and that it was not delivered until that time and the contract was, without doubt, in choete until that time."

The present case differs from the Miller case. In the present case it was not a part of the contract or a condition of the papers pertaining thereto that no contract should be concluded until the mortgage and notes were sent on to New York. In loaning money the Eastern Building and Loan Association examined the abstract of title to property offered as security at its home office and if satisfactory had the notes and mortgage then prepared at such home office. Tr. p. 28 (11). The notes and mortgage so prepared by such association

necessarily were its proposition, which was accepted and the contract closed by the signing of such papers by the borrower, in Tennessee.

The claim of appellee that the Miller case contains dicta cannot be sustained. It was necessary to decide therein what constituted doing business in Tennessee. Besides this case is in exact accord with other Tennessee cases.

Ill. B. & L. Ass'n vs. Walker, 42 S. W. Rep. 192;

N. Y. N. B. & L. Ass'n vs. Camon, 99 Tenn. 344.

There is not the slightest conflict in the Tennessee authorities.

The decisions in Morton vs. Union Bank & Tr. Co., 46 S. W. Rep. 544, and Neal vs. New Orleans &c Associations, 100 Tenn. 607, were based on the fact that the corporation had neither office nor agency in Tennessee. In the Farrell case the party was out of Tennessee when the contract was made. In the Massengill case the corporation only had one transaction after the passage of the prohibitory act "and that was done by means of correspondence between Massengill and the bank's officers."

46 S. W. Rep. 546.

In the Massengill case the corporation was not then doing business in Tennessee and the contract was made at its home office without the slightest assistance from any agency in Tennessee.

Appellee (brief p. 137) relies upon Sullivan vs. Beck, 79 F. R. 201, and Farmers L. & T. Co. vs. R. R., 68 F. R. 417, as holding that Federal Courts will enforce contracts notwithstanding the ruling of the State Court. Sullivan vs. Beck merely decided that the state statute itself only forbid the enforcement of contracts "in any court of this state" before the statute had been complied with, and that such phrase did not apply to United States Courts. Farmers L. & T. Co. vs. R. R. hold that the foreign corporations by becoming a trustee in a deed of trust did not violate the state law and that such trustee could foreclose. It was distinctly held that such trustee could not operate the Railroad without first complying with the terms of the state statute.

Appellee in brief p. 82-83 claims that Bedford's right to an "advance" became vested when he became a stockholder in January, 1891, and insists that while the corporation cannot claim the benefit of the privileges and immunities secured to citizens of the several states by the Federal Constitution, yet that Bedford could insist thereon and had the right to call for the

loan in question notwithstanding the Tennessee laws of 1891.

The further claim is made by appellee (brief p. 89) that the notes and mortgage covered "the indebtedness and obligations of Bedford on account of his subscription for stock and therefore both the notes and mortgage are given in part at least to secure the performance of an obligation antecedent to the enactment of the Tennessee laws of March 26, 1891, and antecedent also to the obligations of Bedford growing out of the 'advance' to him granted upon his application of March 20, 1891."

It is also claimed by appellee (brief p. 89) that the notes and mortgage "do not in reality secure the repayment of a loan of money, but only obligate Bedford to comply with the articles of incorporation and by laws of the appellee and make payment to it at its home office in Syracuse of dues upon his stock and premiums and interest upon the 'advance' to him until such time as the stock should mature, at which date he would become entitled to set off the maturity value of his stock against the 'advance' that had been made to him and demand the cancellation of the mortgage."

In response to the foregoing claims we insist upon the following propositions of fact and law:

1. That the notes and mortgage were given expressly in consideration of the loan made by appellee and would not have been given otherwise. They were not made to secure any obligation that Bedford was under by virtue of having stock in the corporation.

Tr. 22-24.

2. The fact that Bedford took stock in the foreign corporation in January, 1891, which was then doing business in Tennessee, did not prevent the State of Tennessee thereafter imposing terms upon such foreign corporations and forbidding it from doing business or loaning money in Tennessee thereafter, when such terms had not been complied with.

3. The fact that Bedford was a stockholder did not give him a vested right to a loan. As stockholder he could withdraw from the association at any time (Tr. p. 61 sec. 19) and whether he withdrew or not there was no fixed right to any loan for any amount. The corporation could not force a loan on him and he could not force one from it.

4. The loaning of the money to Bedford was part of the general business of the corporation carried on in Tennessee and no arrangement between the parties could render such business and contracts therein valid when the law of Tennessee forbid the same.

5. That Bedford as a stockholder had no right to insist on the foreign corporation doing business in Tennessee and transactions with him as a part of such business were void.

6. That if the foreign corporation had the privilege of loaning to Bedford merely because he was a stockholder therein, then such privilege could only be exercised outside of Tennessee and could not be exercised in connection with and as part of business carried on in Tennessee. The proof showed that the Eastern Building and Loan Association made no loan whatever in Tennessee except through its agents and local boards therein and declined to make loans not coming through and endorsed by such agencies.

See statement of facts in previous brief pp. 6-7-8.

7. That when the loaning of money to Bedford was part of a general business admittedly, carried on in Tennessee, and such business had been forbidden by law, the contracts in question were void, because made in Tennessee. If such contracts were closed in New York or were payable therein they were equally void as being manifestly in evasion of Tennessee law as to foreign corporations doing business in Tennessee.

8. The foreign corporation having no right to carry on business in Tennessee when its laws had not

been complied with, cannot work out any equity through H. L. Bedford, and he himself had none in the face of such laws.

9. When the prohibitory laws of 1891 were passed by the legislature of Tennessee, it was the duty of appellee to comply with the terms thereof or to cease doing business in Tennessee; appellee did neither; it kept up the same agencies and local boards in Tennessee. It claimed the right to continue and did continue the loan business in Tennessee, and sought for such business, furnishing its agents in Tennessee with blanks, etc., to be used therein. Appellee explicitly provided and exacted that loans would not be made by it to persons having stock therein, unless the application was endorsed by and came through such local boards and agencies. (See statement of facts in previous brief, p. 6-7-8). If Bedford as stockholder in or member of the Eastern Building & Loan Association had any fixed right or privilege of applying for a loan, as is claimed by appellee, (which is denied) such right or privilege could have been asserted in New York and not in connection with and as part of the illegal business of the corporation in Tennessee, and the assertion of such lawful privilege in such lawful manner was not abrigded by any law of Tennessee. The appellee could not make a bare privilege which a party may have had to

ask for a loan which might or might not have been asserted or granted, the pretext for carrying on an illegal business in Tennessee and for making loans in the course of such business.

There was no contract right to a loan prior to the statutes of 1891, but laws often render performance of contracts illegal, which were legal when made, and prevent performance thereof.

Odlin vs. Ins. Co., 2 Wash. C. C., 312.
Rogers vs. Hoyt, 4 Vt., 172.
Fitzgerald vs. R. R., 13 L. R. A., 70 (Vt.)
Bradford vs. Jenkins, 41 Miss., 336.
Dermott vs. Jones, 2 Wall., 7.
Saunner vs. Ins. Co., 41 Mo. App., 480.
Brick etc. Church vs. City, 5 Cowen, 538.
Hamilton vs. City of Hamilton, 146, U. S., 258.

INTERSTATE COMMERCE.

Appellee in its brief has argued elaborately that it is a question of interstate commerce. We deny this proposition and have considered it, in the previous brief. We insist:

1. That the kind of business carried on by appellee was not interstate commerce or commerce at all.

2. That the business in which and as part of

which the contracts in question were taken, was business carried on within the limits of Tennessee, and transactions therein cannot be considered interstate transactions. In addition to authorities previously referred to we refer to cases decided by Supreme court of the United States in December, 1900.

C. & O. Railway vs. Kentucky.

Williams vs. Fears.

Money and the loaning thereof is a "mere incident."

Appellee had no right to carry on business in Tennessee without complying with the terms of the Tennessee laws. Whenever appellee asks the court to legalize contracts taken in this illeged business, either because of the claim that they were payable in New York or because of the claim that such contracts were techically concluded in New York. We submit it asks the court to aid it in a palpable evasion of the Tennessee law. Of what use is it for states to pass laws as to foreign corporations doing business within their limits if the corporations themselves by the mere forms of the contracts taken in such business can over-ride and disregard such laws? Under the theory advanced by appellee no matter how many loans were made in Tennessee or what the extent of such loan business was it was all legal though against the express provisions of Tennessee law. Under this theory the Eastern Building &

Loan Association was to determine upon what terms it would do business in Tennessee and the state was powerless. We submit that this claim on behalf of appellee is utterly untenable. If it chose to do business in Tennessee as it says itself it was doing (Record p. 1) Tennessee law must govern. *Appellee could not theoretically be in and out of Tennessee at the same moment: in it to get benefits, and out of it to avoid obligations.*

Respectfully submitted,

HEBER J. MAY.
ROBERT M. HEATH.
W. C. McLEAN.

Attorneys for H. L. Bedford and Lou M. Bedford.

ADDENDA.

CHAPTER 81 of ACTS of 1895.

AN ACT to amend Sections 2, 3 and 4 of an Act passed March the 21st, 1891, being Chapter 122 of said Acts, and providing for the authentication of copies of charters to be filed with the Secretary of State, registering abstracts of same in the register's office in each county in which the company desires, or proposes to carry on business.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That Section 2 of an Act passed March the 21st, 1891, being Chapter 122 of said Acts, be so amended as to read as follows: That each and every corporation created or organized under, or by virtue of, any government other than that of the State, for any purpose whatever, desiring to own property, or carry on business in this State of any kind or character, shall first file, in the office of the Secretary of State, a copy of its charter. It shall be sufficient to authenticate such copies so filed by the certificate of the secretary, or secretaries, of such corporations, and by attaching thereto the corporate seal.

SEC. 2. *Be it further enacted*, That Section 3 of

said Act, passed March the 21st, 1891, be so amended as to read as follows: That it shall be unlawful for any foreign corporation to do business, or attempt to do business, in this State without first having complied with the provisions of this Act, and a violation of this statute shall subject the offender to a fine of not less than $100.00 nor more than $500.00, in the discretion of the jury trying the case.

SEC. 3. *Be it further enacted*, That Section 4 of said Act, passed March the 21st, 1891, be so amended as to read as follows: That when a corporation complies with the provisions of this Act, said corporation may then sue and be sued in the courts of this State, and shall be subject to the jurisdiction of this State as fully as if it were created under the laws of the State of Tennessee; *Provided*, that this Act shall not affect any contracts or remedy heretofore made by foreign corporations not having complied with the existing laws on the subject.

SEC. 4. *Be it further enacted*, That all laws and parts of laws in conflict with the provisions of this Act be and are hereby repealed.

SEC. 5. *Be it further enacted*, That this Act take

effect from and after its passage, the public welfare requiring it.

Passed April 27, 1895.

ERNEST PILLOW,
Speaker of the Senate.

JOHN A. TIPTON,
Speaker of the House of Representatives.

Approved April 30, 1895.

P. TURNEY,
Governor.

CHAPTER 114 of ACTS of 1895.

AN ACT to provide for the inspection of Building and Loan Associations doing business in the State of Tennessee.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That Chapter 2 of the Acts of 1891, passed March 26, 1891, and approved March 28, 1891, entitled "An act to regulate the business of ~~the~~ building and loan associations," and Chapter 114 of the Acts of 1893, entitled "An Act to amend Chapter 2 of the Acts of 1891," and passed March 26, 1891, and approved March 28, 1891, be, and the same are, hereby repealed.

SEC. 2. *Be it further enacted*, That the name,

"Building and Loan Association," as used in this Act, shall include all corporations, societies, organizations, or associations doing business in this State under a building and loan charter, or engaging in a building loan business.

Sec. 3. *Be it further enacted*, That on or before the first day of September, in each year, every building and loan association doing business in this State, and governed by this Act, shall file with the Treasurer of the State a detailed report of its affairs and operations for the year ending the thirtieth of June, immediately preceding, and such report shall be verified, under oath, by the president and secretary, or by three directors of the association, and shall contain answers to the following questions:

1. The date when the association was incorporated, and the par value of each share of stock.

2. Number of shares sold during the year.

3. Number of shares canceled or withdrawn during the year.

4. Number of shares in force at the end of the year.

5. A detailed statement of total receipts and disbursements, showing specifically what source received and to what source applied, inclusive of all items of expense.

6. A statement of the assets and liabilities at the end of the year. The following items shall constitute the assets of a building and loan association:

1. Money actually loaned.

2. Accrued interest, premium and fines on loans.

3. Dues in arrears not exceeding twelve months, provided not less than one monthly payment of dues has been made.

4. Furniture and fixtures.

5. Real estate.

6. Taxes and insurance advanced.

7. Solvent accounts.

8. Such other legitimate assets as the association may acquire in the course of its business.

9. Cash on hand as shown by books and official certificate of designated depositories.

7. File copies of its by-laws and published literature, which shall be free from ambiguity, and not misleading in its nature.

SEC. 4. Each association shall pay to the treasurer of the State ten ($10) dollars, on filing of each report; if an association shall willfully fail to furnish to the Treasurer of the State any report required by this Act, at the time so required, it shall, in the discretion of the State Treasurer, forfeit the sum of twenty-five ($25) dollars per day for every day such report shall be de-

layed or withheld, and the Treasurer of the State may maintain action in his name of office to recover such penalty, and the same shall be paid into the treasury of the State for the benefit of the State.

SEC. 5. That it shall be the duty of the State Treasurer, once in each year, or as often as he may deem necessary, at such times as he may select, to examine the books and verify the statement of each association governed by this Act, doing business under the laws of this State; and he shall make an annual report to the Governor, which shall be printed as other reports of the treasurer, giving a summary of the reports of all associations governed by this Act. The treasurer or examiners appointed by him shall have access to, and may compel the production of all books, papers, securities and moneys, of the association under examination. They shall have power to administer oaths, and examine under oath, the officers and agents of such association as to its affairs. And whenever it shall appear to the treasurer that any such association is impaired, he shall instruct the secretary to call a meeting of the stockholders and lay before them the result of his investigation. After passing upon the report of the treasurer the stockholders may contine in business if they so decide, but, in that event, there shall be no money paid to withdrawing stockholders, nor will

the association be allowed to issue stock, except a sufficient amount to loan the money as it accumulates, until said impairment is made good. And if it appears to the treasurer that the association is not conducting its business in accordance with its charter and by-laws, is being mismanaged, or that its funds have been misappriated, he shall take the same course as above; but in case the stockholders decide to continue business the association shall be given sixty days to correct its irregularities. And in case the said association fails to correct such irregularities in the conduct of its affairs, and to comply with the instructions of the State Treasurer in this regard, the said treasurer may, upon the advice of the attorney general, take such legal proceedings in the name of the State for the benefit of all the parties in interest as may be needful to wind up its affairs, and the court may, in its discretion, appoint a receiver to take charge of its assets; in case of such proceedings the said association shall pay all costs. The expenses and the attorney general's fees, for services, shall be allowed and paid out of the assets of the defaulting company.

SEC. 6. *Be it further enacted*, That all the officers of any building and loan association governed by this Act, and doing business in this State, who handle any of the funds of such association, shall give sufficient

bond for the faithful performance of his official duties as the board of directors may require, and no such officers shall be deemed qualified to enter upon the duties of his office until his bond is approved by the board of directors, and with whom such bond shall be filed; *Provided*, that the State Treasurer may require of any association, at any time, such increase of said bond or additional securities thereto as such increase of said insurance as he may deem necessary for the protection of members. The penalty for a failure of any association to file and maintain the bonds or policy, as required by the provisions of this section, shall be a fine of one hundred ($100.00) dollars for each day such association transacts business after such bond has become due under the provisions of this Act. Said bond or policy shall be held in trust for the benefit and protection of the members of such association, and shall be enforceable by any member whenever cause of action shall accrue. The fine herein provided for shall be recovered from the directors of such association.

SEC. 7. *Be it further enacted*, That all building and loan associations hereafter organized under the laws of the State shall confine their business to the county in which the main or principle office is located until such association has accumulated twenty-five thousand ($25,

000.00) dollars in building and loan or other securities, and such associations shall, before doing any business in any other county in this State, obtain from the State Treasurer a certificate showing that it has the amount of assets required by this section.

SEC. 8. Non-resident building and loan associations having not less than one hundred thousand ($100,000.00) dollars in assets, shall, before doing any business in this State, obtain a license from the State Treasurer, by complying with the following:

1. Such association shall file with the State Treasurer a certified copy of its charter, articles of incorporation, and by-laws, showing its mode of business.

2. File a detailed report of its actual financial condition, as provided for in Section 3 of this Act.

3. File a written instrument properly executed under the seal of the association, appointing the State Treasurer its agent, upon whom service of process may be had, stipulating and agreeing that any legal process, mesne or final, affecting such association, may issue against it from any county in the State, and when served upon the State Treasurer, in duplicate, shall have the same effect as personal service on said association. The State Treasurer shall, however, mail a copy of any papers served upon him, postage prepaid, to the home office of such association.

4. Pay the State Treasurer twenty-five ($25) dollars as fees for filing the papers mentioned in this section. For each license and annual renewal thereof the sum of ten ($10) dollars.

SEC. 9. It shall be the duty of the State Treasurer to examine the reports and papers of any such association applying for license to do business, and if he become satisfied that the applicant is solvent, and is being lawfully conducted he shall issue such association a license for a period of one year, and renew the same from time to time. The State Treasurer shall, whenever he may deem it necessary, examine into the affairs of any foreign association doing business in this State, and should he find, on examination, that such association is not conducting its business in accordance with the law, or that its affairs are in an unsound condition, or if such association refuses to permit examination to be made, or to pay the examination fee, he may cancel the authority of such association to do business in this State, and cause a notice thereof to be sent to the home office of the association, and to be published in at least one daily newspaper of this State once a week for four consecutive weeks. After publication of such notice, it shall be unlawful for any agent of said association to receive any further stock deposit from members resid-

ing in this State except payments on stock on which a loan has been made.

SEC. 10. *Be it further enacted*, That no officer, director or agent of any foreign building and loan association shall, in this State, solicit subscriptions to the stock of such association, or sell, or knowingly cause to be sold, or issued to a resident of this State any stock of an association while said association is not duly licensed, as herein provided License to agents to such companies or associations shall be issued by the Treasurer annually, on the first of January, and said Treasurer is authorized to collect from said associations a license fee of five ($5) for each traveling agent. Any violation hereof shall be deemed a misdemeanor, and, upon conviction, shall be punished by a fine of not less than ten (10) nor more than fifty (50) dollars; *Provided*, that the License issued by the State Treasurer to such associations as comply with this Act, by filing the certified copy of charter, by-laws, annual reports, and certificate making the State Treasurer their agent for the service of process, as herein required, shall give full and complete authority and power to enter into contract in this State, and no other requirement shall be made, except as provided in this Act.

SEC. 11. *Be it further enacted*, That the Treasurer of the State is hereby authorized and empowered to

employ agents or experts to examine said associations, who shall be subject to removal at any time by the State Treasurer. The examiner shall receive from the associations, for the purpose of meeting his expenses, and compensation, annual fees, as follows: *Provided*, non-resident associations shall not be required to pay such annual fees, except when their affairs are actually examined during the year, to-wit: Associations with assets of not exceeding $25,000, $25; associations with assets of more than $25,000 and not exceeding $100,000, $50; for each additional $100,000 of assets, or major part thereof, up to $1,000,000, $10; for each additional $100,000 of assets, or major part thereof, over $1,000,000, $5.

SEC. 12. *Be it further enacted*, That any and all parties violating any of the requirements of this Act, are hereby declared guilty of a misdemeanor, and shall be subject to a fine of twenty-five ($25) dollars per day for each day's violation thereof; and the Treasurer of the State may maintain action in his name for the recovery of said fine.

SEC. 13. *Be it further enacted*, That when, by the laws of any other State, territory or nation, any taxes, fines, penalties, licenses, fees, deposits of money, securities, or other obligations, or prohibitions are imposed

on building and loan associations of this State, doing business in such other State, territory or nation, or upon their agents therein, so long as such laws continue in force the same obligations, or prohibitions of whatsoever kind, shall be imposed upon all building and loan associations of such other State, territory or nation doing business in this State, and upon their agents here.

SEC. 14. *Be it further enacted*, That all non-resident associations that have heretofore complied with the Acts hereby repealed shall have ninety days from and after the passage of this Act to comply with the provisions of same; *Provided*, the State Treasurer may, in his discretion, extend the time, not to exceed six months, as to any particular association.

SEC. 15. *Be it further enacted*, That this Act take effect from and after its passage, the public welfare requiring it.

Passed April 27, 1895.

JOHN A. TIPTON,
Speaker of the House of Representatives.

ERNEST PILLOW,
Speaker of the Senate.

Approved May 6, 1895.

P. TURNEY,
Governor.